SENATE.

THURSDAY, *July 30, 1914.*

(Legislative day of Monday, July 27, 1914.)

The Senate reassembled at 11 o'clock a. m. on the expiration of the recess.

Mr. SMOOT. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Brady	Gronna	Nelson	Simmons
Brandegee	Hitchcock	Newlands	Smith, Ga.
Bristow	Hollis	Norris	Smoot
Bryan	Hughes	O'Gorman	Stone
Burton	Jones	Overman	Sutherland
Chamberlain	Kenyon	Page	Thomas
Crawford	Kern	Perkins	Thornton
Culberson	Lane	Ransdell	Vardaman
Cummins	Martine, N. J.	Reed	West
Gallinger	Myers	Sheppard	Williams

Mr. PAGE. I wish to announce the necessary absence of my colleague [Mr. DILLINGHAM]. He has a general pair with the senior Senator from Maryland [Mr. SMITH].

Mr. KERN. I wish to announce the unavoidable absence of my colleague [Mr. SHIVELY]. He is paired. This announcement may stand for the day.

Mr. JONES. I desire to announce that the junior Senator from Michigan [Mr. TOWNSEND] is necessarily absent. He is paired with the junior Senator from Arkansas [Mr. ROBINSON]. I will let this announcement stand for the day.

The VICE PRESIDENT. Forty Senators have answered to the roll call. There is not a quorum present. The Secretary will call the roll of absentees.

The Secretary called the names of the absent Senators, and Mr. CAMDEN, Mr. LEA of Tennessee, Mr. THOMPSON, Mr. TILLMAN, and Mr. WHITE answered to their names when called.

Mr. CATRON entered the Chamber and answered to his name.

Mr. WHITE. I desire to announce the unavoidable absence of my colleague [Mr. BANKHEAD] and to state that he is paired. This announcement may stand for the day.

Mr. SHAFROTH entered the Chamber and answered to his name.

The VICE PRESIDENT. Forty-seven Senators have answered to the roll call. There is not a quorum present.

Mr. KERN. I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The motion was agreed to.

The VICE PRESIDENT. The Sergeant at Arms will carry out the instruction of the Senate.

Mr. OWEN and Mr. JOHNSON entered the Chamber and answered to their names.

The VICE PRESIDENT. Forty-nine Senators have answered to the roll call. There is a quorum present.

COMMITTEE SERVICE.

Mr. OVERMAN was, on his own motion, relieved from further service upon the Committee on Claims and the Committee on the University of the United States.

Mr. STONE was, on his own motion, relieved from further service upon the Committee on Indian Affairs.

Mr. HOLLIS was, on his own motion, relieved from further service upon the Committee on Immigration.

Mr. HUGHES was, on his own motion, relieved from further service upon the Committee on Public Health and National Quarantine.

FEDERAL TRADE COMMISSION.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 15613) to create an interstate trade commission, to define its powers and duties, and for other purposes.

Mr. HOLLIS. I desire to introduce an amendment to the pending bill to be laid on the table and printed. It will be offered at some later time.

The VICE PRESIDENT. It will be so ordered. The question is on agreeing to the amendments in the nature of a substitute reported by the committee as amended.

FRANK WOODRUFF KELLOGG.

Mr. BRISTOW. Out of order I should like to introduce the following bills——

The VICE PRESIDENT. Is there objection?

Mr. SMOOT. I am compelled to object.

The VICE PRESIDENT. There is objection.

Mr. BRANDEGEE. I send to the desk a bill and ask the Secretary to read it. Then I will ask the Chair if it comes within the rule as to bills which may be introduced.

The SECRETARY. A bill for the relief of Frank Woodruff Kellogg.

Mr. SMOOT. Is it a personal relief bill, I will ask the Senator from Connecticut?

Mr. BRANDEGEE. Let the Secretary read the bill.

The VICE PRESIDENT. The bill will be read.

The bill was read, as follows:

Be it enacted, etc. That the President be, and he is hereby, authorized to appoint Frank Woodruff Kellogg, now a captain on the retired list of the United States Navy, to the active list of captains of the United States Navy, to take rank next after Capt. Thomas Snowden, United States Navy: *Provided*, That the said Frank Woodruff Kellogg shall be carried as additional to the number in the grade to which he may be appointed under this act and as additional to any grade to which he may at any time hereafter be promoted.

The VICE PRESIDENT. Is there objection to the introduction of the bill?

Mr. SMOOT. Mr. President, I object to the bill if it does not fall within the class of "personal relief" measures.

The VICE PRESIDENT. The Chair rules that the bill, being a bill for the correction of a naval record by an act of Congress, may be left with the Secretary as are other similar bills.

Mr. BRANDEGEE. I will state that the bill proposes to reinstate an officer who was "plucked," together with several others in regard to whom the House Committee on Naval Affairs is having hearings. I have promised to introduce the bill. Of course, if the rule under which the Senate is operating precludes its introduction I shall have to submit.

The VICE PRESIDENT. The Chair does not believe it does.

The bill (S. 6178) for the relief of Frank Woodruff Kellogg was read twice by its title and referred to the Committee on Naval Affairs.

Mr. BRISTOW. May I inquire if pension bills come under the rule?

The VICE PRESIDENT. They do. They may be left with the Secretary.

Mr. JONES. I make the point that bills can not be introduced on the floor, but that they may be introduced by leaving them with the Secretary.

The VICE PRESIDENT. That is all the Senator from Kansas asks to do, as the Chair understands.

COMMITTEE SERVICE.

Mr. KERN. I ask to be relieved from further service upon the Committee on Public Buildings and Grounds.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the Senator is excused.

Mr. BRANDEGEE. Mr. President, I will not make a point of order on this proceeding, but it seems to me excusing Senators from serving on committees is just as much morning business as is anything else. I shall not object, however, but it certainly is not the consideration of the trade commission bill.

FEDERAL TRADE COMMISSION.

Mr. NEWLANDS. Mr. President, I ask for the regular order.

The VICE PRESIDENT. The Chair lays before the Senate House bill 15613, commonly known as the Federal trade commission bill.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 15613) to create an interstate trade commission, to define its powers and duties, and for other purposes.

Mr. THOMAS. Mr. President, the Senator from Iowa [Mr. CUMMINS] devoted a part of his discussion yesterday to the consideration of some criticisms which I made on the day before to that part of the bill now before the Senate which provides for the creation of a Federal trade commission, one of which was that its effect would be the regulation instead of the prevention of monopoly. The Senator's view of the proposition is, of course, diametrically opposite to my own, and the bill was no doubt drawn in accordance with the Senator's theory. I know that he, in common with a majority of the Interstate Commerce Committee, in drafting and presenting this measure had no other object in view than the prevention and removal of monopolistic conditions. I have no quarrel whatever with those who believe that such is the object to be subserved, and which will be subserved if this bill becomes a law; and, much as I object to the establishment of any more commissions, unless their creation be absolutely necessary to safeguard the public welfare, I might be constrained to vote for it if I were convinced that the position taken by the Senator from Iowa is the correct one.

Mr. President, the so-called antitrust act or Sherman law of 1890, which did not create a commission, was designed to prevent monopoly; its object was to interdict all restraints of trade or combinations which would result in monopoly. The administration of that law, at first ineffective and ultimately more vigor-

ous, has served neither to prevent the existence of monopolies nor to limit them to those which were in existence at the time of its enactment. Speaking generally, the effect of that law upon trade conditions has been to regulate instead of remove the evils which brought it into existence; and the Supreme Court, in defining and applying that law, has seen fit to interpolate into the text of it a word which the Congress of the United States deliberately refused to put into it; a change which necessarily makes it a regulative instead of a prohibitory act. I fear, Mr. President, that the outcome of the bill now pending, in its practical application to our industrial and economic affairs, will be along the same lines, and will ultimately, therefore, regulate, as the Progressive platform provides for, instead of prevent the evils of which we complain and which we all desire to avoid.

The commission is to be equipped both with the power and the duty of preventing unfair competition or unfair methods of competition, which may be, but which I do not think are, tantamount to the same thing. It must operate through an investigation of complaints, either initiated by itself or which are to be initiated before it by those having or presuming to have knowledge of the things which need investigation. It operates, in other words, by trying, by examining into, and by investigating given infractions of the law against unfair competition, as those infractions may be brought to its attention; and, of course, as the power to determine involves the power to hear, the result is that after the testimony is received and the commission is advised as to the given instance, it passes judgment upon that instance, either against or for the contention of the petitioner; either as declaring that the particular act or acts violate or do not violate the law.

This means, Mr. President, that competition is to be made lawful by a process of elimination. The things which are within the statute and the things which are without the statute are to be determined as the result of individual instances of investigation; and out of the statute, therefore, we are going to establish a sort of common law of competition, if I may use that term in connection with decisions based upon a statute. So that the monopolies of the country, the corporations which are not monopolistic engaged in interstate commerce, and, if the last amendment of the Senator from Iowa is to be adopted, individuals and partnerships are to have their competitive powers regulated—perhaps I should not say regulated; are to have their competitive powers and opportunities defined, not permanently but continuously by a continuing series of investigations. The result of that, to my mind, must be the regulation of competition, which involves the regulation of those within the jurisdiction of this commission, the determination by its acts and by its decrees of what is fair and what is unfair in the rivalry of commercial forces for the markets of the country. It is therefore inevitable that the logical outgrowth of the creation of this commission is the perpetuation of monopolistic conditions in this country.

It may be said that monopoly and fair competition can not coexist; but those who make that assertion also declare that unfair competition is an element in business that is separate and apart from restraints of trade and combinations which lead to monopoly and at which the Sherman Act was aimed; in other words, that it is independent of and covers different subjects from those which are covered and intended to be covered by the antitrust laws. It seems to me, Mr. President, that these positions are not reconcilable. I am of the opinion that the subject matter of the statutes and of this bill must to a large degree be identical. I can not conceive of a monopoly that does not practice unfair competition, whether it be lawful competition or not; it is difficult to conceive of the creation or the progress of a monopoly except by processes which, to some extent, consist of what is generally known as unfair competition, and so long as the institutions which practice it are permitted to exist just so long must those practices continue.

You can not do away with unfair competition and at the same time tolerate the existence of huge aggregations of manufacturers and of capital. You can not tolerate their existence, on the one hand, as they are at present constructed, and by any sort of process, whether operated by a commission or otherwise, eliminate the practice of unfair competition. You may define what it consists of; you may define what it does not consist of; but just so long as they continue, Mr. President, will these conditions to a greater or less extent continue, and the living example and illustration of the fact is the impotence of the Interstate Commerce Commission in the face of these difficulties.

It tries to, but it does not, so regulate transportation that it is fair and equal to all sections of the country and to all its patrons; it tries to define, but it is unable to enforce, all those things which every man of common sense engaged in business knows to be wrong, as it is not competent to require the observance of all those which are and which the public instinctively recognize as being fair and just. Consequently it is engaged in an impossible scheme of satisfactory regulation, and yet it can do nothing more than to regulate; we can not very well regulate an evil by recognizing or permitting the existence of the evil itself. We can minimize its results, but we can not abolish them. Hence I am not convinced, although the argument is a good one, and certainly a most earnest and sincere one, that this commission, if created, will result in an extinction of the monopolistic conditions of which we complain.

I concede, Mr. President—and I think I said so the other day—after listening to the argument of the Senator from Iowa and of some of the other Senators upon the subject, that to provide for the prevention of unfair competition in terms is perhaps as definite as a statute upon that subject ought to be. Hence I am not combating the phraseology proposed by the committee. I content myself with the assertion that in the administration of the law it will resolve itself into one which regulates but does not remove monopoly.

Mr. CUMMINS. Mr. President——

Mr. THOMAS. I yield to the Senator.

Mr. CUMMINS. I must have misunderstood the Senator from Colorado, I think, and I desire to be certain about it. I understood him to say, in the beginning of his remarks, that the act of 1890 prohibited restraints of trade but not monopoly.

Mr. THOMAS. No, Mr. President; if I said so, I was unfortunate. What I think I said and what I intended to say was that the purpose of the antitrust law of 1890 was to prohibit restraints of trade and monopolistic combinations also.

Mr. CUMMINS. The second section of the act of 1890, as the Senator of course knows, is a direct prohibition of any attempt to monopolize or any monopolization of the commerce of the United States or any part of the commerce of the United States. If that statute was made effective, it seems to me to be as perfect an effort to destroy monopoly as we could possibly make. I can not conceive of any more direct attack upon monopoly than is contained in the second section of the antitrust law; and if it remains in full force and effect, and if it is efficiently administered, have we not all the instrumentalities that we can have to destroy monopoly and to prevent any attempt to monopolize?

Mr. THOMAS. Mr. President, I think that the second section of the act to which the Senator calls my attention was designed to, and if rigidly enforced perhaps would, meet the evil and make our present attempts at further legislation unnecessary. I believe, however, that if it were supplemented by the enactment of such a measure as the Williams bill, now pending in the committee, the two together would certainly, if observed and enforced, do away with monopolistic conditions in this country if they can rid it of them by legislation; but the unfortunate fact remains that, notwithstanding the prohibitory statute of 1890, and in spite of it, perhaps 75 per cent of the monopolies with which the country is overrun have been conceived, brought forth, and reached their maturity in the face of it; and this has been made possible by the privileges, permissions, and encouragement of State legislation.

When the State of New Jersey creates and confirms such a combination as the Harvester Trust as lawful under its statutes, when the State of New Jersey and other States arm and equip such a combination with power to invade the commerce of every State in the Union and exercise all the vast and unrestrained power and authority conferred upon it by State charter, the prohibitive statute of the United States has been powerless to cope with such a condition; which justifies the humorous, but decidedly philosophic, suggestion of Mr. Dooley, that it might be well for the United States to incorporate under the laws of New Jersey in order to secure sufficient power and authority to cope with, restrain, and overcome its other artificial and far-reaching creations.

Therefore, I say that the Williams bill should supplement this measure; and the two together, in all probability, I firmly believe, would offer a statutory corrective not only for future, but for existing present conditions.

I was about to ask when interrupted, having referred not only to the judicial construction, but to the interpolation of words in another section of the antitrust act, which never should have been put there, and which were put there by judicial authority, that inasmuch as evidently all of the cases and controversies which come before this commission must find their way to the courts, and there be ultimately decided, what warrant have we for supposing that the Supreme Court of the United States will not declare that when we said here that "unfair competition shall be unlawful," we meant that "un-

reasonably" unfair competition should be unlawful, or "unduly" unfair competition should be unlawful; that we did not mean what we said, and did not say what we meant?

Upon the assumption that such may be the construction of the statute, what would remain of it but a mere power on the part of the commission to regulate the manner in which these companies shall do business hereafter in the United States, the regulation itself being in terms subject to an appeal to the courts. I go further, and ask why should we establish a commission which will be nothing but an intermediary? No matter what its decision may be, the courts must ultimately determine whether that decision shall or shall not become effective. This means delay, discouragement, and demand for fresh and supplemental legislation.

I do not for a moment want to be understood as counseling a denial to citizens of the right to appeal to the courts from these orders. What I have objected to is that we are to create a commission which will occupy practically the position of a subordinate court of appeals, one more intermediary between litigants and the court of final resort, when in the ultimate analysis of things it is the Supreme Court of the United States that must determine each individual case.

Regulation seems to me to be as inevitable from these conditions as the succession of the seasons. Hence I am unable, as yet, to perceive the wisdom, the expediency, or the necessity of launching another commission upon the commission-ridden people of the United States, armed with power and authority exceeding that of all the rest of them put together, and yet subordinated to a tribunal whose dockets are already crowded with the accumulated appeals of several years.

Mr. SUTHERLAND. Mr. President, I have had occasion to comment at some length on the vague character of section 5 of this bill, if the term "unfair competition" shall not be limited by construction to its strict legal meaning. The confusion which will result, the vague character of the term which is employed in that view of the bill, can not be better illustrated than by some of the statements made by the various proponents of the measure.

President Wilson, in his address to Congress of January 20, 1914, used the following language:

> The business of the country awaits also—has long awaited, and has suffered because it could not obtain—further and more explicit legislative definition of the policy and meaning of the existing antitrust law. Nothing hampers business like uncertainty. Nothing daunts or discourages it like the necessity to take chances, to run the risk of falling under the condemnation of the law before it can make sure just what the law is.

Those are words of wisdom, Mr. President, with which I am most heartily in accord.

> Surely we are sufficiently familiar with the actual processes and methods of monopoly and of the many hurtful restraints of trade to make definition possible—

Definitions, however, do not seem to be possible to the Senators who prepared or assisted in preparing this measure—

> at any rate up to the limits of what experience has disclosed. These practices, being now abundantly disclosed, can be explicitly and item by item forbidden by statute—

I commend that statement to the Senator from Nevada [Mr. NEWLANDS], that these practices can be explicitly and item by item forbidden by statute—

> in such terms as will practically eliminate uncertainly, the law itself and the penalty being made equally plain.
>
> And the business men of the country desire something more than that the menace of legal process in these matters be made explicit and intelligible. They desire the advice, the definite guidance, and information which can be supplied by an administrative body, an interstate trade commission.

The idea of the President seems to have been that any law which we might pass upon this subject should be clear and definite and explicit in its terms; that it should, item by item, in plain, unambiguous English phrase, tell the business men of this country what they could and what they could not do. In response to that this bill has been presented.

The Senator from Nevada, in his first discussion of this measure, referring to "unfair competition," made this statement:

> Now, then, the question is what unfair competition covers. It covers every practice and method between competitors upon the part of one against the other that is against public morals.

Let me repeat that, because I regard it as a gem—

> It covers every practice and method—

That is, every method—

> between competitors upon the part of one against the other that is against public morals, in my judgment, or is an offense for which a remedy lies either at law or in equity.

So that the meaning of the term "unfair competition" is not to be arrived at by consulting the decisions of the courts or the law writers. It goes beyond that. It not only includes an offense for which a remedy lies either at law or in equity, but, according to the view of the Senator from Nevada, it includes every other practice that is against public morals—a pretty broad category.

The Senator, later along, said:

> My individual opinion is that an interlocking directorate would come under this provision.

How, in the name of heaven, an interlocking directorate, in and of itself, could be regarded as unfair competition I do not know; but we have the statement of the Senator from Nevada—who is the author of this bill, and whose interpretation of it will be given great weight by the trade commission hereafter—that it does include interlocking directorates.

Mr. NEWLANDS. Mr. President——

Mr. SUTHERLAND. Let me finish the quotation, and then I will yield to the Senator.

> My individual opinion is that an interlocking directorate would come under this provision with reference to unfair competition. If an interlocking directorate were used for the purpose of creating a community of interest between two or three or four corporations, that would make them more powerful in their competition with an individual competitor; and I wished the test to be not simply the fact that there were common directors in numerous corporations, but the fact that the creation of that common directorate involved oppression to the independent concern, and thus involved unfair competition.

So that "oppression" is to be regarded as unfair competition, whatever meaning may be included within that word.

I now yield to the Senator from Nevada.

Mr. NEWLANDS. Mr. President, I observe that what the Senator has read since I first rose explains what I intended to state, namely, that a mere interlocking directorate would not necessarily constitute unfair competition, but an interlocking directorate created between two corporations with a view to substantially lessening or eliminating competition would do so.

The Senator objects to the term "public morals" or "good morals" as a test. I think it is a very good test. I think there are certain practices that shock the universal conscience of mankind, and the general judgment upon the facts themselves would be that such practices are unfair.

I do not see much difficulty, when you appeal to the conscience of mankind, in determining what is fair and what is unfair in business practices. I think almost every well-regulated mind can determine it, particularly where you get together five men of capacity and learning and experience and present to them the facts regarding a certain business practice. I see no difficulty about such an organization determining what is fair and what is unfair, and determining it in such a way as to satisfy the universal judgment of mankind, except possibly the parties interested.

I claim, then, that that is a definite standard if the practice is against good morals and against public morals and tends to the injury of a competitor unfairly. Then, as to the numerous other things to which an action of tort or an action in equity to restrain can lie, it seems to me where those actions involve competition, where there would be a cause of action by the individual against his competitor, almost all those would be included in the term "unfair competition."

If we were to attempt to enumerate the numerous fraudulent practices which constitute unfair competition, we would be just as much at sea as if we endeavored to state distinctly every series of facts that by any possibility of human experience could constitute fraud. Something must be left to human judgment; something must be left to human conscience in the determination of these questions; and when you have organized a tribunal in such a way that it is composed of men of skill and education and training and experience and character, you get the machinery for the establishment of proper rules and standards.

Mr. SUTHERLAND. Mr. President, I think I may say without offense to the Senator from Nevada that his idea seems to be that philosophic reflections about things in general can be written into a statute and made good law. I think a statute must depend upon something more definite than that. The Senator has added now, however, another line of cases which come under the description of "unfair competition"—in fact, two or three others that may come under the term—in addition to those that he has already stated—for example, anything which shocks the conscience of mankind. I wonder if the Senator thinks that a statute in those terms would be a good statute—that "anything which shocks the conscience of mankind is hereby declared to be unlawful and punishable by fine and imprisonment"? If "unfair competition" means that, it is less definite than I have ever imagined it to be.

But the Senator proceeded at a later time and stated:

> There are numerous practices tending toward monopoly that may not come within the provisions of the antitrust law and amount to a monopoly or to monopolization. We want to check monopoly in the embryo.

So that according to the view of the Senator from Nevada there are included within the term "unfair competition," first, all violations of the antitrust laws, including even wrongs which may arise from interlocking directorates and intercorporate relationships; second, it includes, apparently, any acts which affect a competitor for which a remedy now lies either at law or in equity; third, it includes all other acts affecting a competitor that are against public morals and, I may add now, that "shock the conscience of mankind," though they may be, under existing laws, quite legal.

That is the view, very briefly stated, of the Senator from Nevada.

The Senator from Iowa [Mr. CUMMINS], who, I may say, of those who have stood sponsors for this legislation is, in my judgment, the only one who has measurably put coherence into what I regard as a hopelessly incoherent proposition, says:

We have chosen to report a rule for the trade commission in the language which has been suggested, namely, "unfair competition." It is that competition which is resorted to for the purpose of destroying competition, of eliminating a competitor, and of introducing monopoly. That is the "unfair competition" in its broad sense which this bill endeavors to prevent. * * * The unfairness must be tinctured with unfairness to the public, not merely with unfairness to the rival or competitor. * * * We are not simply trying to protect one man against another; we are trying to protect the people of the United States, and of course there must be in the imposture or in the vicious practice or method something that has a tendency to affect the people of the country or be injurious to their welfare. (CONGRESSIONAL RECORD, June 25, 1914, pp. 12150–12151.)

That is a coherent statement, although I do not believe it to be a precise limitation of what unfair competition will include. Later along, the Senator from Iowa said:

And the attempt is to go further and make some things offenses that are not now condemned by the antitrust law. That is the only purpose of section 5—to make some things punishable, to prevent some things, that can not be punished or prevented under the antitrust law. (CONGRESSIONAL RECORD, June 30, 1914, p. 12454.)

There may be unfair competition which does not constitute restraint of trade. Unfair competition must usually proceed to great lengths and be destructive of competition before it can be seized and denounced by the antitrust law. In other cases it must be associated with, coupled with, other vicious and unlawful practices in order to bring the person or the corporation guilty of the practice within the scope of the antitrust law. The purpose of this bill in this section and in other sections which I hope will be added to it, is to seize the offender before his ravages have gone to the length necessary in order to bring him within the law that we already have. (CONGRESSIONAL RECORD, July 2, 1914, p. 12622.)

But we propose to do one thing more. We propose to make it an offense. We propose to make it unlawful for any corporation, or any person, indeed, to practice unfair competition, and wherever the practice of unfair competition has not reached a point that constitutes a violation of the antitrust law, then we intend to do what we can to maintain fair, full, free competition through the intervention of the trade commission. (CONGRESSIONAL RECORD, July 2, 1914, p. 12625.)

Now, I call attention to those statements of the Senator from Iowa not for the purpose of criticizing them but for the purpose of showing the irreconcilable conflict which exists between the Senator from Iowa and the Senator from Nevada as to the meaning of the term "unfair competition."

The Senator from Arkansas [Mr. ROBINSON] has still a different idea of its meaning, which in many respects is at war with the view of the Senator from Iowa and the Senator from Nevada. The Senator from Arkansas said:

The term "unfair competition" in trade will embrace every practice which may be held by a court to be unjust, inequitable, or dishonest; and when Congress legislates on this subject I can see no reason for limiting the statute to one or two practices, when there are many which are equally objectionable. (CONGRESSIONAL RECORD, June 25, 1914, p. 12153.)

He quoted in that connection from the work on Words and Phrases, volume 8. These are the quotations which he read, and I invite the attention of the Senate to them because they state what I understand to be the meaning of "unfair competition":

With respect to articles placed upon the market for sale it is only—

Mark the word "only"—

it is only when the one article is dressed so as to represent the other and to deceive a proposing purchaser as being that other that there can be said to be a case of "unfair trade." (Sterling Remedy Co. *v.* Eureka Chemical & Manufacturing Co. (U. S.), 80 Fed., 105, 108; 25 C. C. A., 314.)

Again, he cited:

The doctrine of unfair competition in trade rests on the proposition that equity will not permit anyone to palm off his goods on the public as those of another. Unfair competition in trade as distinguished from infringement of trade-marks does not involve the violation of any exclusive right to the use of trade-marks or symbols. The word may be purely descriptive and the mark or symbol indicative only of style, size, shape, or quality, and as such open to the public. Yet there may be unfair competition in trade by an improper use of such mark or symbol.

That is a quotation from Ninety-fourth Federal Reporter, page 656. And, again, he quoted:

The term "unfair competition in trade" includes the simulation by defendant of the packages of plaintiff, putting up and selling packages of the same general appearance as those of the plaintiff. The court will only interfere to protect the plaintiff and the public and for the suppression of unfair and dishonest competition when "the resemblance is such that it is calculated to deceive and does, in fact, deceive the ordinary buyer making his purchases under the ordinary conditions which prevail in the conduct of the particular traffic to which the controversy relates. (T. B. Dunn Co. *v.* Trix Manufacturing Co., 63 N. Y., Supp. 333, 335; 50 App. Div., 75; Cong. Rec., June 25, 1914, p. 12153.)

That I understand to be, according to the decisions and the law writers, the meaning of "unfair competition." I have already stated it briefly in the remarks that I submitted to the Senate a day or two ago.

But the Senator from Arkansas [Mr. ROBINSON] upon a later occasion ignored these definitions that he had read to us from the law books and began to draw definitions of "unfair competition" from the economists, and he quoted from Mr. William S. Stevens, of Columbia University. He said:

Mr. William S. Stevens, of Columbia University, in an article called to my attention by Congressman STEVENS of New Hampshire, who introduced this provision in the House, discusses the subject of "unfair competition" from an economic point of view—

Not from a legal point of view. We have the words "unfair competition" to be considered from the legal point of view—from the economic point of view, according to the Senator from Arkansas, and from the ethical point of view, according to the Senator from Nevada—

from an economic point of view, and classifies, according to their elementary characteristics, 11 forms of "unfair competition," as follows. I read now from his article on page 283 of the Political Science Quarterly for June, 1914:

"1. Local price cutting.
"2. Operation of bogus 'independent' concerns.
"3. Maintenance of 'fighting ships' and 'fighting brands.'
"4. Lease, sale, purchase, or use of certain articles as a condition of the lease, sale, purchase, or use of other required articles.
"5. Exclusive sales and purchase arrangements.
"6. Rebates and preferential contracts.
"7. Acquisition of exclusive or dominant control of machinery or goods used in the manufacturing process.
"8. Manipulation.
"9. Black lists, boycotts, white lists, etc.
"10. Espionage and use of detectives.
"11. Coercion, threats, and intimidation."

The Senator from Arkansas proceeds:

The terms used fairly define without detailed discussion the various practices thus classified, and undoubtedly embrace nearly all—

"Nearly all." Unfortunately they do not embrace all, but according to the view of the Senator from Arkansas they embrace nearly all—

of the methods of "unfair competition" now in use. * * *

Unfortunately we are not enlightened as to the residue. So the unfortunate business man, after this act shall have been passed, must not only consult a lawyer, who will in turn consult the law books in order to ascertain whether or not the thing he intends to do is a valid and proper thing under the law, but he must retain an economist. The value of the services of economists will go up. Each of these great business concerns, in addition to carrying a lawyer on the pay roll, must carry an economist in order to determine what is unfair competition according to the view of the economist. In addition to that he must employ probably by the year also somebody skilled in ethics, who must advise him from time to time whether or not the thing that he proposes to do is ethical.

The Senator from Arkansas proceeds:

Nearly all normal business men can distinguish between "fair competition" and "unfair competition." Efficiency is generally regarded as the fundamental principle of the former—efficiency in producing and in selling—while oppression or advantage obtained by deception or some questionable means is the distinguishing characteristic of "unfair competition." (CONGRESSIONAL RECORD, June 27, 1914, p. 11231.)

According to the view of the Senator from Arkansas, therefore, unfair competition will consist of the act of palming upon the public the goods of the offender as the goods of somebody else, which is the legal meaning of the expression. It will also include within it everything which the economist regards as unfair competition, and also any act which normal business men might deem inconsistent with efficiency in producing and in selling.

Now, those are the views of these three Senators with reference to the meaning of this expression. But the Senator from Delaware [Mr. SAULSBURY], who also ardently supports this bill, has his view as to the meaning of unfair competition. He said:

Courts have always recognized the customs of merchants, and it is my impression that under this act the commission and the courts will be called upon to consider and recognize the fair and unfair customs of merchants—

So we have another test, the fair and unfair customs of merchants must be considered—

manufacturers and traders, and probably prohibit many practices and methods which have not heretofore been clearly recognized as unlawful.

Every man in his own business knows when a competitor is pursuing unfair methods.

Sometimes it is the case that he may know; sometimes he may suspect that unfair methods are being used, when in fact they are not. That is my suggestion, not the suggestion of the Senator from Delaware.

Every professional man knows when a competitor is guilty of unfair, unprofessional, and unethical conduct. It may be that heretofore we have been satisfied to allow only the usual punishment to come upon such persons as the violation of the ethics of a profession or a business in time naturally brings; but it is undoubtedly true that sentiment in this country has come to the point where it will, if it can, by law prohibit, prevent, make unlawful, and punish unfair practices in competitive business. (CONGRESSIONAL RECORD, July 3, 1914, p. 11593.)

So that according to the view of the Senator from Delaware unfair competition would include all customs of merchants which were in violation of the ethics of a profession or a business.

The distinguished Senator from New Hampshire [Mr. HOLLIS], differing in many respects from all his colleagues upon this matter, announces his view of what is meant by unfair competition, and says:

Competition is unfair when it resorts to methods which shut out competitors who by reason of their efficiency might otherwise be able to continue in business and prosper. Without the use of unfair methods no corporation can grow beyond the limits imposed upon it by the necessity of being as efficient as any competitor. The mere size of a corporation which maintains its position solely through superior efficiency is ordinarily no menace to the public interest. * * *

The Sherman Antitrust Act does not become effective until a monopoly is full grown, in full panoply, so that you can prove to the court that it is a monopoly and is in restraint of trade; but if the proposed trade commission has its attention called to some unfair method of competition it can immediately investigate, and if it decides that it is unfair competition and may lead to monopoly or restraint of trade it may prohibit it.

If anything is going on which unchecked may lead to monopoly or restraint of trade, it is to be included within the term "unfair competition."

Mr. WEST. Mr. President——

Mr. SUTHERLAND. I will yield in just a moment. I will yield to the Senator as soon as I complete this statement:

And then the court will come in and put that prohibition into effect. * * *

The Sherman Act applies only to restraint of trade by a combination and to monopolization of commerce. Unfair competition is a means of restraining or of monopolizing trade. But there may be some doubt as to whether the mere use of an unfair method, without more, by a corporation of no conspicuous size, would be held to fall within the scope of the Sherman Act. (CONGRESSIONAL RECORD, July 15, 1914, p. 12146.)

So that, according to the view of the Senator from New Hampshire, the term "unfair competition" includes a means of restraining or monopolizing trade, which may now be forbidden by the Sherman law.

Second, methods which fall short of being a violation of the Sherman law but which the proposed trade commission may determine may lead to monopoly or restraint of trade; and

Third, any other acts which interfere with efficiency.

Now I yield to the Senator from Georgia.

Mr. WEST. Referring to what the Senator just said with reference to unfair competition, I should like to ask a concrete question. Suppose a corporation set up in the manufacturing of grain drills, which corporation had been fairly prosperous, with business improving, and had made a large quantity of drills; the demand in a large measure ceases, and in order to meet their obligations they must sell them for less than the cost—would that be regarded as unfair competition?

Mr. SUTHERLAND. I do not know. The Senator from Nevada [Mr. NEWLANDS] could probably enlighten the Senator from Georgia about that.

Mr. WEST. I should like to have the Senator's view.

Mr. SUTHERLAND. But I do not know. This trade commission will evolve from their inner consciousness some view of that matter, I presume.

Mr. WEST. I will say to the Senator if it does, I can see where the bill would work a hardship on the corporation of limited means and yet allow the large corporation, the corporation of ample means, to go on and exist, because it could hold its grain drills and tide over the general stagnation in business.

Mr. CUMMINS. Mr. President——

Mr. SUTHERLAND. I yield to the Senator from Iowa.

Mr. CUMMINS. While the question was not put to me I can not allow it to go without a suggestion. There is no element of unfairness whatever in the transaction suggested by the Senator from Georgia. It has never been intimated by any writer or any court with which I am familiar that the transaction which he describes would be regarded as unfair competition or unfair in any way.

Mr. WEST. If the Senator will allow me, it is admitted that when the Standard Oil Co. goes into cities and sells kerosene below the price of production it is engaging in unfair competition. Might it not mean that for doing that sort of business, as I suggested a few moments ago, they could be haled before this commission, the commission saying that they were selling their output below the cost of production?

Mr. CUMMINS. I can not conceive that a manufacturer selling agricultural implements under the circumstances stated by the Senator from Georgia could be brought before the commission or could be charged with unfair competition. That illustrates how necessary it is to use the general term instead of attempting to denounce a particular practice.

If the Standard Oil Co., doing business throughout the United States, should attempt to crush a competitor in a particular locality—a competitor who had come into existence for the purpose of honestly carrying the trade—by putting down the price of its commodity in that locality, and at the same time maintaining a higher price in other localities, that would be a very clear instance of unfair competition. It is not a theory either, because it is a practice or was a practice which the Standard Oil Co. for years imposed upon its competitors, and through it did drive out a great many worthy rivals.

While I am on my feet I desire to say that I understood the Senator from Utah to commend in high terms the recommendation of the President with respect to defining each instance of wrongdoing that we had become familiar with, and that we ought to prohibit that particular thing. I believe that that is possible to do with regard to some things. It is not possible to do with regard to a great many. If the Senator from Utah will examine section 2 of the bill that has been reported by the Judiciary Committee, he will see some of the difficulties in trying to prevent a particular practice. Take the case of a discrimination in price that I have just suggested to the Senator from Georgia [Mr. WEST]. We all recognize that there are circumstances in which to discriminate in price between buyers and between localities is the most effective means of crushing competition; but if the Senator from Utah will attempt to put in the form of a law a prohibition against that practice, he will encounter a great deal more difficulty than he has encountered in fully understanding some of the definitions that have been proposed for unfair competition.

Mr. SUTHERLAND. Mr. President, I concede the correctness of what the Senator from Iowa has said. It is an exceedingly difficult thing, because it is true that certain acts committed by corporations under some circumstances ought to be denounced by the law and under wholly different circumstances ought not to be; but we do know that there are certain practices that, with the exceptions that could be, I think, enumerated, are bad. For example, I thoroughly agree with the Senator from Iowa and with other Senators as to the vice of the interlocking directorates. It has resulted in great abuses, and, so far as Congress has control over the subject—that is, in so far as it relates to interstate commerce—it is a practice that ought to be forbidden; and yet there may be, as, for example, in the case of banks—I am not going into it at any length—but there may be cases there where there ought to be an exception made. Intercorporate stockholding has resulted in abuses. We would have to draft the language covering these practices with some care. There are certain specific things which are done by corporations and by traders in interstate commerce which ought to be forbidden, but, in my view of it, they ought to be specifically forbidden, so that the business man may know what he can do. We should not crowd everything of an immoral character or of an unethical character into some vague phrase which will simply involve the business men of the country in a greater degree of uncertainty than that which now exists.

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER (Mr. SAULSBURY in the chair). Does the Senator from Utah yield further to the Senator from Iowa?

Mr. SUTHERLAND. Yes.

Mr. CUMMINS. I agree with the Senator from Utah; but even the simple case of preventing interlocking directorates is not so easy of solution as many people imagine. What we desire is to keep competitive corporations, or corporations that ought to be competitive, really independent of each other. It is easy enough to say that a man shall not be at the same time a member of the board of directors of two corporations which do a competitive business, but somebody will have to define "competitive." I suppose it is not so hard to define "competitive" as it is to define "unfair," but it is only a little less difficult. There is the widest difference of opinion with regard to the elements that constitute competition in business. When we have made that simple prohibition, we are then bound to create some tribunal to determine whether the two corporations of which the person is a common member are in fact competitive.

We must take into account the location and nature of the business. When we come to consider even that little thing the Senator from Utah will perceive how complicated any regulation of commerce is.

Mr. SUTHERLAND. Mr. President, what the Senator from Iowa has just said emphasizes, in my own mind, a view which I expressed the other day, and that is that the congressional mind is not at this moment sufficiently instructed upon this question to pass fair and wise and intelligent legislation. Neither one of these bills ought to be passed at this session of Congress. I predict—and it is always an unsafe thing to predict—but I venture to predict that if these two bills, the unfair-competition bill and the Clayton bill, shall be passed in their present form indescribable confusion will result to the business world. The problems involved have not been sufficiently digested. We have had a discussion here in the Senate which has been helpful, I think. We all of us agree that there are evils in the business of this country that ought to be remedied; but now, after this discussion, these bills ought to be laid aside; they ought to be recommitted to the committees of this body in which they originated; and those two committees ought to sit down, probably by a joint subcommittee, and make a thorough investigation of this whole problem. If it takes a year to do it, the matter is of sufficient importance to justify us in doing that. The end of the world is not going to come if these bills are not passed at this session. I think it would be the part of wisdom if the Senate could now stop further consideration of these measures and send them back to the committees to be dealt with as I have indicated.

While I am upon that general subject, Mr. President, I want to say that I am a thorough believer in competition; I believe in the most thoroughgoing competition among rivals in business of all kinds. I may say, however, that competition among railroads is not so important when it comes to the mere matter of charges for service as it is among the producers of commodities, because the railroad is under the regulation of the Interstate Commerce Commission; its charges can be fixed; and so long as the law is as it is, there can be, in reality, no competition in the matter of charges among railroads. There may be very important competition between two parallel lines of railroad with reference to the matter of facilities. One railroad may carry freight more speedily than another; another may furnish better cars for passengers, better accommodations, better facilities. So upon those matters there may be real competition, and such competition ought to be preserved; but the competition among manufacturers, trading and distributing corporations, and others ought to be preserved and ought to be enforced, because, I think, that is the only way in which we can effectually prevent the monopolization of trade.

Mr. WEST. Mr. President——

Mr. SUTHERLAND. Just a moment and I will yield to the Senator. I take no stock whatever in the statement that has been sometimes made by very distinguished gentlemen that mere size is not objectionable. I think that mere size may be exceedingly objectionable.

I think that when any group of men, calling themselves a corporation or a partnership, or anything else, have put together such an enormous amount of capital that they practically dominate the production and trade in some particular article of prime necessity, even though they may be able to furnish it at a less price than it could be furnished by thoroughgoing competition, that that in and of itself is an exceedingly objectionable thing, because primarily it puts an end to opportunity for individual initiative; it is a blow at individualism, upon which, in the last analysis, our civilization has been builded. Therefore I am opposed to these great combinations.

Mr. President, I may go further and say that my own view of it is that there is only one thoroughgoing method of reaching that evil, and that is by passing a law that will be difficult to put into terms of legislation, I grant you—but by passing a law which will make it unprofitable for these combinations to grow beyond a certain size.

The Senator from Nebraska [Mr. HITCHCOCK] has the right idea about it. When the tariff bill was pending he introduced an amendment for which I very cheerfully voted, which proposed to impose a tax upon great corporations graduated in proportion to the amount of their product. For example, here is a great corporation which, we will say, is producing to-day 80 per cent of a given commodity. I think that is unfortunate; I think it is bound to result in an unwise curtailment of individual opportunity, and we shall in the end pay dearly for the very cheapness which may result. If we could pass a law which would say that whenever that corporation was producing—finding out first what the aggregate amount of the entire production would be, $500,000,000 a year, or whatever it may be—that whenever that corporation produced more than $100,000,000, for example, it should be taxed upon the excess at a certain rate; if it produced $150,000,000, the tax should be increased, and increased and increased until finally it would become so burdensome that it would no longer be profitable for a corporation to produce an excessive quantity. By a law of that kind, effectually administered, not for the purpose of collecting taxes but for the purpose of destroying the evil, a power which Congress has exercised time and time again, we could regulate the size of these combinations.

We imposed a tax of 10 per cent upon State bank issues, not for the purpose of the revenue but for the purpose of destroying what we conceived to be an evil. We imposed a tax upon oleomargarine, not for the purpose of collecting revenue or encouraging the trade but for the purpose of destroying what we considered to be an evil. The courts will not inquire as to the purposes of Congress if the law itself upon its face be under some power of the Constitution. In some such way I think the evil that I have spoken of may be reached. I doubt very much whether it can be effectually reached by such measures as we are considering here to-day.

I now yield to the Senator from Georgia.

Mr. WEST. Mr. President, referring to the matter of competition between railroads, it has been the policy of the Government, acting through the Interstate Commerce Commission, not to allow the ownership of competing lines. If the Interstate Commerce Commission fixes the rates, what hurt would come to the Government or to the people whom the railroads serve through the ownership of competing lines?

Mr. SUTHERLAND. I will say to the Senator what I think is the evil, and that is because they compete as to other matters than rates. They compete in the matter of facilities, as I have already illustrated. For instance, here are substantially two parallel lines running between Chicago and Omaha. Of course, those two lines must charge exactly the same amounts for carrying freight or passengers between those two points. We all concede that; so that there can be no competition in that respect, and if that were all there would be no objection, perhaps, to the same company owning both lines; but they compete and compete very materially with one another about other things. If they were owned by the same company, and those were the only two lines, then both of them might cut down their running time; both of them would very likely deteriorate in the facilities which they furnish. It is for that reason, to preserve that sort of competition, which in many aspects is quite as important as competition in the matter of rates, that there ought to be no common ownership of competing lines. With that policy I am in entire accord.

Mr. CUMMINS. Mr. President——

The VICE PRESIDENT. Does the Senator from Utah yield to the Senator from Iowa?

Mr. SUTHERLAND. Certainly.

Mr. CUMMINS. Mr. President, is the Senator from Utah quite accurate when he says there is no competition between railroads with respect to rates? I have often heard that asserted, but I do not accept it as strictly sound. It is true that competing railroads as to competing points must charge the same rate, but so long as railroads are independent of each other and so long as each of them is at liberty to prescribe for itself its schedule of rates there is competition. Take the case of the Baltimore & Ohio and the Pennsylvania systems. It is entirely competent for the Pennsylvania Railroad to put in whatever rates it sees fit to establish, subject only to the review of the Interstate Commerce Commission. The law does not contemplate that it shall consult either the Baltimore & Ohio, a competitor, or the New York Central Railroad, a competitor, in determining what rates it will establish. Therefore there is a potential competition in theory, and our law is intended to preserve it. I know very well that in practice, when one road thinks of changing its rates between competitive points, there is some sort of conference preceding the change, but that conference is not contemplated by the law, and, indeed, if it proceeds to the extent of creating any obligation on the part of either road to observe the rates that are established by the other it is contrary to the law.

I do not want to enter upon an argument as to whether there ought to be competition in rates, but I do not think it ought to be generally accepted throughout the country that there is no competition in rates, so long as each railroad is at liberty to establish its own rates.

Mr. SUTHERLAND. Mr. President, I recognize that there is much force in what the Senator from Iowa says; and he would be entirely accurate if the railroad companies were not

subject to the regulating power of the Interstate Commerce Commission. Under the law, however, a railroad company can not change its rates except upon filing its schedule and making it public for a certain time before it goes into effect. It follows from that that in one way or another the various railroads do reach a common opinion about it; and I do not know any law we could pass that would prevent it, for there is such a variety of ways in which it may be done.

A lot of traffic managers interested in roads that are competing more or less with one another get together in a room and one of them says in a casual way: "We are going to make a rate on wheat from such and such a point to such another point of 5 cents a bushel," or whatever it may be. Well, that is notice. If every other railroad is willing to do the same thing, it is accepted silently; but if not another says: "Well, that is a pretty low rate. I think we will put in force a rate of 6 cents a bushel"; and in some mysterious way they finally reach the conclusion that really the fair rate is 5½ cents a bushel. There are so many ways of doing it that I think, in view of the situation, I am accurate in saying that there is no real competition, and there can be no real competition, between railroad companies in the mere matter of charges.

But, Mr. President, I have been led entirely away from the thing I was discussing. I had been undertaking to show the variety of views of the gentlemen who stand sponsor for this bill as to the meaning of the term "unfair competition." If you take them all together now, and make a sort of composite statement of all their views, we shall find that under the term "unfair competition" there is forbidden——

First, every act of passing off one's goods or business for another's. That is the primitive and the primary meaning of the term, and the sole meaning, as I believe.

Second, all methods of competition tending to restraint of trade or monopoly, which are now forbidden by the Sherman law.

Third, substantially all violations of the antitrust laws, including even wrongs arising from interlocking directorates and allied intercorporate directorships.

Fourth, all other acts which the "commission * * * decides * * * may lead to monopoly or restraint of trade," although they may not now be subject to the penalties of the Sherman Act.

Fifth, all other acts affecting a competitor for which "a remedy lies either at law or in equity."

Sixth, all other acts that either affect a competitor and are "against public morals," or that in any way interfere with economic "efficiency," though they may be now quite lawful, and not forbidden by the Sherman law or by any other law.

And I will add a seventh item, which the Senator from Nevada has given us this morning—anything which "shocks the conscience of mankind."

If these Senators who have deeply studied this subject disagree so much among themselves as to what constitutes unfair competition, what is the trade commission going to do? What is the unfortunate business man going to do about it? If he follows the view of the Senator from Iowa, he will run counter to the view of the Senator from Nevada. If he follows the view of the Senator from Nevada, he will run counter to the view of the Senator from Arkansas. If he follows the view of the Senator from Arkansas, he comes into collision with the Senator from Delaware. If he follows them all, he runs up against the Senator from New Hampshire [Mr. HOLLIS]. So he is in rather an unfortunate condition to know what he can do.

I desire now to read from an article written by Mr. A. W. Shaw upon the general subject of this bill. He says, in the course of his article:

> But much of the legislation now proposed as supplementary to the Sherman Act will affect noncombatants. The average business man will be policed by the methods for regulating unfair business.
>
> Many of these methods do not give proper consideration to his everyday work. One section of the Newlands bill decidedly suggests government by suspicion. It assumes all business guilty until shown to be innocent. Its proposal for broadcast annual reports burdens the innocent with the cost of searching out the guilty.
>
> If Congress were to pass a law forcing every citizen to go to court once a year on a sort of day of judgment, explain his work against the criminal code and finally justify himself or stay in a cell, there would probably be a revolution. Most certainly the courts would be so occupied investigating the innocent that the guilty might escape. Still the proposed antitrust legislation provides that business men go through a procedure similar in principle. From every corporation of whatever size engaged in interstate commerce a detailed annual report of its acts and practices is provided for.
>
> An unfair business with a full treasury—

Now, mark—

> An unfair business with a full treasury does not view with alarm the cost of preparing reports for the Government, but the average business man must figure to dollars and cents the work involved.
>
> The majority of the 100,000 corporations which might be affected are the bread and butter of business men. It will average to cost each at least $200—$20,000,000 out of the net profits of the going concerns of the country, just when rising costs are most troublesome.

I think the Senator from Nevada will probably doubt that last statement—that rising costs are just now most troublesome—because I know that he and his colleagues promised that we should be no longer troubled with rising costs:

> If the reports are not complete enough to cost at least this amount, they will be inadequate. Thus, from the practical viewpoint, an indirect legislative problem is summed up as a direct tax on the average business and stated as a dollars-and-cents cost that measures work to be done and work to be paid for from sales. And $20,000,000 is an exceedingly conservative estimate; executives' supervision and bookkeepers' wages alone can eat up $200 in no time.
>
> If the reports are to be of full value to the Government, uniform accounting methods must be used. It took millions to install uniform accounting in the railroad offices—

I may interpose there to say that in dealing with railroads we are dealing with a single kind of business, in which the problem of providing for uniform accounts is a very simple one. This bill undertakes to deal with corporations of vast number, engaged in a multiplicity of activities, where in many instances uniform reports would be a practical impossibility—

> and there the different companies faced similar problems. The cost of unifying the varying accounting practices of business concerns handling activities as diversified as the roster of the Nation's market list is little short of prohibitive.
>
> Having secured reports from the hundred thousand corporations, at a cost exceeding $20,000,000, a trade commission would be in danger of strangulation from the flood of resulting work. To analyze and study the reports can not fail to take the entire time of many experts and directors. The results they secure will not hasten court procedure and can not supply more than a roundabout means for searching out actual violators of the antitrust laws.
>
> When the average business man looks at this proposed antitrust legislation he sees two needs: First, protection from business pirates operating in violation of the rules of fair competition; and, second, a method of punishing unfair business of this type by a plan which will not burden the man who operates in strict conformity with the law. He believes that the broad principles laid down in the Sherman Act, if efficiently enforced under the rules of unfair competition already worked out by the courts, satisfy these needs. He looks with suspicion upon legislation which condemns specific practices as unfair competition, because he fears that, without enlarging his real protection, the language employed will serve to render of doubtful legality certain well-established and legitimate trade usages not condemned by the Sherman Act.
>
> He wants some sort of an instrument that will apply the Sherman Act in a manner which makes justice prompt. He has no objection to—in most instances he wants—a constructive commission which will hold public hearings as the result of complaints of high Federal officials or concerns that believe themselves aggrieved. He urges that this commission be given the power to instigate action against firms and individual business men it believes to be violating our laws.
>
> But the administration needs clearly to recognize the difference between the average business and unfair business and so shape legislation in practical detail as in principle that from the seed of bad practices which certain "big" businesses have sown the average business man of this country will not reap a crop of expensive details and cumbersome impediments.

Further on he says:

> In his turn the business man must assume a wider sphere of action and give more of his time to external problems, including the Government's plans. He needs at Washington a department to consult rather than to fear. It has been suggested that the trade commission be given power to tell when the ice is thin, to determine in advance what specific practices are or are not in violation of the antitrust laws. But the average business man is not interested in testing thin ice. He desires specific assistance that will help him to stand, regardless of the thickness of the ice—usable, profit-bringing, down-to-the-ground assistance, such as the Department of Agriculture gives the farmer. This means separating the Government's accusatory functions for controlling business from the Government's constructive and advisory functions for helping business. The trade commission now proposed can not legally undertake constructive work of this type.
>
> The Department of Commerce as it stands is a composite of policing and assistance, of upbuilding and suspicion. It raises fish, measures boats, and keeps the lighthouses going at the same time it is policing business, investigating the clothing industry, and taking the census. There is no question of the high ideals of those in charge of the Department of Commerce. In the department now, headed as it is by a man who has successfully directed large business enterprises, conditions are, indeed, unusually favorable. But it is a very serious question whether or not it will ever be possible to crowd from the present group of diverse and unrelated activities much constructive work helpful to the business man.

Mr. President, I had occasion the other day to call attention to some laws of a vague character which have met the condemnation of the courts; and, among other things, I referred to a Chinese law which I thought had been before the Senator from Nevada when he drew this bill. I do not understand that he has admitted that charge, but he has not denied it; and I therefore take the liberty of reiterating that he must have had that Chinese law before him. I think, however, he had another law before him as well.

During the French Revolution some very peculiar laws were passed. They seemed to lose sight of the distinction between the legislative and the judicial power. Their laws were couched usually in the rather indefinite phrase of Jean Jacques Rousseau and similar philosophers. To put them into operation required not so much an act of judgment as it did an edict on the part of the tribunals which were charged with their administration.

I am inclined to think that the Senator from Nevada in some way obtained that law which was passed during the French Revolution, and is denominated the "22 Prairial," which means, as I understand, the law of June 10, 1794. It is true that the law to which I am going to call attention is difficult to find. It is not, so far as I have been able to examine the matter, to be found in the ordinary historical works. This copy was given to me by a gentleman who happened to be in Paris, digging into the musty records of that period, and who discovered it. He was a scholar of ripe learning, who delighted in research; and, happening to find this among those musty records, he copied it and gave me this copy.

The law was passed, as I have said, on June 10, 1794. Article 1 provides:

The revolutionary tribunal shall have a president and 4 vice presidents, a public accuser, 4 assistant public accusers, and 12 judges.

It was a more ambitious organization than that proposed by the Senator from Nevada.

2. The jurors shall consist of the number of 50.

The Senator from Nevada has seen fit to reject that part of the law. He has provided for no jurors, of the number of 50 or of any other number.

3. The different functions shall be exercised by the following-named citizens:

President, Dumas; vice presidents, Coffinhal, Sellier, Naulin, Ragmey.

The Senator has not gone so far as to name the gentlemen who shall compose this commission. He might well have done so.

Public accuser, Fouquier; assistants, Gribauval, Royer, Liendon, Givois.

Then in this law follow the names of the judges and the 50 jurors—they were named, too.

The revolutionary tribunal will be divided into sections composed of 12 members; that is to say, 3 judges and 9 jurors, which jurors can not judge in less number than 7.

Now, notice the simple, comprehensive character of the statement which I am about to read and which the Senator from Nevada, in a general way, must have had in mind:

4. A revolutionary tribunal is instituted to punish the enemies of the people.

But they went further than the Senator from Nevada. They defined what should constitute the enemies of the people:

5. The enemies of the people are those who seek to destroy public liberty, either by force or by ruse.

They not only dealt with the enemies of the people, but they went further:

6. The reputed enemies of the people are those who would induce the reestablishment of royalty or seek to debase or dissolve the national convention and the Republican Revolutionary Government, of which this is the center.

Those who would betray the Republic in the command of places and of armies or in all other military functions, carrying on correspondence with the enemies of the Republic, or endeavoring to deprive the armies of their provisions.

Those who seek to interfere with the provisioning of Paris or to cause scarcity of food in the Republic.

Those who aid the projects of the enemies of France, or who favor the escape of conspirators and of the aristocracy—

He need not assist, but let anybody favor the escape of some poor devil of an aristocrat who was in danger of the guillotine and be was an enemy of the people—

or in calumniating patriotism—

There is a beautiful phrase, which I commend to the Senator from Nevada—

or in calumniating patriotism, either by corruption of the mandates of the people or in abusing the principles of the revolution, of their laws, or of the measures of the Government, by efforts false and perfidious.

I want the Senator to mark that word "perfidious." It will come in very handily some of these days in some legislation. Now notice this:

Those who have deceived the people or the representatives of the people to induce them to take steps contrary to the interests of liberty.

There is no difficulty about enforcing that, I would think, according to the philosophy of the Senator from Nevada.

Those who have sought to induce discouragement by favoring the enterprises of tyrants leagued against the Republic.

Now this:

Those who would spread false news in order to divide or vex the people.

Those who seek to mislead the opinion and to obstruct the instruction of the people, to deprave the manners and to corrupt the public conscience, to hurt the energy and purity of the revolutionary and republican principles, or by arresting progress either by writings counter-revolutionary or insidious—

Anybody who makes a writing that is insidious in character. I feel sure that corporations ought to be compelled by some sort of a law to refrain from putting anything into their writings of an insidious character. That has been overlooked—

or by any other machinations.

Mr. BRANDEGEE. Does the word "reactionary" occur?

Mr. SUTHERLAND. No; the word "reactionary" was not in the minds of these gentlemen at that time. That is a word of modern evolution.

The contractors of bad faith who compromised the safety of the Republic, and the destroyers of the public fortune, and others comprised in the dispositions of the law of the seventh frimaire.

Those who being charged with public functions abused the service to aid the enemies of the revolution, to vex the patriots, or to oppress the people.

At length all those who are designated in the preceding laws, relative to the punishment of conspirators and counter-revolutionaries.

Now follows this. The Senator from Nevada, unfortunately, has provided for no penalty for this vague offense of "unfair competition." It is made unlawful apparently by way of gentle admonition only. There ought to be a penalty prescribed. This is the penalty which the French Assembly provided:

7. The punishment for all these misdemeanors is death.

8. The necessary proof is every kind of document, either material, or moral, or verbal, or written.

Now, that is something the Senator ought to put into this bill—the necessary proof to hold a corporation responsible for unfair competition, I may interpolate—

is every kind of document, either material, or moral, or verbal, or written—

The Senator might have some difficulty in determining just what was a verbal document, but that is the language of this law—

which can naturally obtain the assent—

This will commend itself, I know, to the Senator's philosophic mind—

which can naturally obtain the assent of every just and reasonable mind.

That is the test. That is the rule of evidence.

The rule of judgment is the conscience of the jurors enlightened by the love of country—

That is a beautiful and comprehensive test, a very good test, to be sure, but rather difficult of application—

by the love of country, their intention, the triumph of the Republic, and the ruin of its enemies.

A beatific state of mind for a juror to decide a case in. The test is to be his love of country and the triumph of the Republic and the ruin of its enemies. That is the rule of judgment.

The procedure—

Which is delightfully simple—

The procedure, the simple means which good sense indicates to the conscience of truth in the forms which the law determines.

However, that was a little too broad. They had narrower notions than the Senator from Nevada about this matter. So they said:

It is circumscribed by the following points:

9. Every citizen has the right to seize and to arraign before the magistrates conspirators and counter-revolutionaries. He is held to denounce them from what he knows of them.

10. No person can arraign a prisoner at the revolutionary tribunal except the national convention, committee of public safety, the committee of general security, the representatives of the people, commissioners of the convention, and the public accuser of the revolutionary tribunal.

That is rather a lengthy list of people who are thus brought within the magic circle of circumscription.

11. The constituted authorities in general can not exercise this right without having previously obtained authority of the committee of public safety and the committee of general security.

They are a little circumscribed again.

12. The accused shall be interrogated before the court and in public. The formality of the secret interrogation which precedes is suppressed as superfluous; it can have place only in the particular circumstances where it will be judged useful to the knowledge of truth.

13. If there exists any proof, either material or moral, independent of the testimony—

That ought to go into this bill.

13. If there exists any proof, either material or moral, independent of the testimony, it will not be heard by witnesses unless it appears necessary either to discover some accomplices or for some other greater considerations of public interest.

That is, they are not permitted to consider improper testimony unless it is necessary to do so. If it is necessary to do so, then they may consider it.

14. In the cases where this proof is given the public accuser can call the witnesses who can enlighten justice.

15. All the depositions are made in public, and no written deposition will be received unless it is impossible to bring the witness before the tribunal, and in this case it will be necessary to secure express authority from the committees of public safety and general security.

Those committees on public safety and general security had a pretty large contract on their hands, evidently.

16. The law for the defense of calumniated patriots does not extend to conspirators.

A calumniated conspirator evidently was given short shrift. If he was a calumniated patriot, he could make his defense. You could calumniate a conspirator as much as you pleased, but you had to stop when you came to a patriot.

17. The debates finished, the juries will form their verdict, and the judges will pronounce the penalty in the manner determined by law. The president will charge the jury with clearness, precision, and simplicity. If he presents his charge in an equivocal or inexact manner, the jury can demand that it be expressed in another manner.

18. The public accuser can not on his own authority renew a previous application addressed to the tribunal or where he would have made an arraignment himself in the case where there would have been no matter of an accusation before the tribunal. He will make a written report and motion to the chamber of council, who will pronounce their judgment; but no defendant can be placed beyond judgment before the decision of the chamber has been communicated to the committees of public safety and general security which examined him.

19. There will be made a double register of the persons arraigned before the revolutionary tribunal, one for the public accuser and the other for the tribunal, on which will be inscribed all the names of the defendants.

20. The convention repeals all those preceding laws which are inconsistent with the present laws and extends only the laws concerning the organization of the ordinary tribunals, applying themselves to the crimes of counter-revolution and to the action of the revolutionary tribunal.

21. The report of the committee will be joined to the present decree as instruction.

If I am mistaken in my view that the Senator from Nevada has had this law before him and has become more or less saturated with its precision and its humanity and its lack of arbitrary power, then I commend it to his consideration when he comes to frame amendments to the bill, which I understand are impending to a greater or less extent.

The VICE PRESIDENT. The question is on the amendment of the committee as amended.

Mr. JONES. The question is on the entire substitute, is it not?

The VICE PRESIDENT. Yes; on the committee substitute.

Mr. NEWLANDS. There is an amendment pending as an additional section.

Mr. GALLINGER. Let it be read, Mr. President.

Mr. LIPPITT. Mr. President, I suggest the absence of a quorum.

Mr. THOMAS. Mr. President, I rise to a question of order. I wish to know whether any business has been transacted under the rule.

The VICE PRESIDENT. No business has been transacted under the rule.

Mr. GALLINGER. I rise to ask the Chair to point us to the rule which requires that business shall be transacted.

The VICE PRESIDENT. The Chair quoted the Senator from New Hampshire a few days ago as being in favor of this ruling when he held that business had to intervene.

Mr. GALLINGER. I think bills have been introduced, have they not?

Mr. JONES. I wish to suggest that several Senators were relieved from service on committees, and that certainly is business.

The VICE PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Hughes	Norris	Stone
Brandegee	Johnson	Overman	Sutherland
Bryan	Jones	Owen	Swanson
Camden	Kenyon	Page	Thomas
Catron	Kern	Perkins	Thornton
Chamberlain	Lane	Pomerene	Tillman
Chilton	Lea, Tenn.	Ransdell	Vardaman
Clark, Wyo.	Lee, Md.	Reed	Walsh
Colt	Lewis	Saulsbury	West
Cummins	Lippitt	Shafroth	White
Gallinger	Martin, Va.	Sheppard	Williams
Gronna	Martine, N. J.	Simmons	
Hitchcock	Nelson	Smith, Ga.	
Hollis	Newlands	Smoot	

Mr. CAMDEN. I desire to announce the unavoidable absence of my colleague [Mr. JAMES]. He is paired with the Senator from Massachusetts [Mr. WEEKS]. I will let this announcement stand for the day.

The VICE PRESIDENT. Fifty-three Senators have answered to the roll call. There is a quorum present. The question is on the amendment of the committee, which is in the nature of a substitute.

Mr. NEWLANDS. I understand the amendment pending is the additional section.

The VICE PRESIDENT. That has never been offered to the Senate.

Mr. BRANDEGEE. Some Senator asked that the amendment might be read. It was not read to the Senate.

The VICE PRESIDENT. There seems to be a misapprehension. It seems to be in the mind of Senators that they can send an amendment to the desk and have it printed and lie on the table, and that then it is pending before the Senate. It is not pending in that way, and can not pend in that way. The only question that is now pending before the Senate is the substitute offered by the committee. There are a large number of amendments that have been sent up to the desk and printed, but they have never been offered.

Mr. BRANDEGEE. I understand; but I wanted to know which committee amendment was pending, which substitute, at what page it comes in.

The VICE PRESIDENT. It is the substitute for the bill.

Mr. BRANDEGEE. Oh.

The VICE PRESIDENT. That is the only question that is now pending before the Senate.

Mr. BRANDEGEE. And its adoption is equivalent to the passage of the bill.

Mr. NEWLANDS. I ask for a vote upon the amendment which I offered to insert as an additional section—section 11.

The VICE PRESIDENT. Does the Senator from Nevada offer it now?

Mr. NEWLANDS. I offer it now.

Mr. GALLINGER. I ask that it be read.

The VICE PRESIDENT. The Secretary will read the amendment.

The SECRETARY. It is proposed to add at the end of the bill a new section, as follows:

SEC. 11. That nothing contained in this act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust acts or the acts to regulate commerce, nor shall anything contained in the act be construed to alter, modify, or repeal the said antitrust acts or the acts to regulate commerce or any part or parts thereof.

The VICE PRESIDENT. The question is on the amendment offered by the Senator from Nevada.

Mr. BRANDEGEE. Mr. President, what necessity is there for this amendment? Does anyone think that this committee amendment would affect the Sherman law or modify it, I would ask the chairman of the committee?

Mr. NEWLANDS. I do not think it does.

Mr. BRANDEGEE. I wondered what is the reason for using this language, if there is no reason given for it, that is all.

Mr. NEWLANDS. Mr. President, an amendment was offered by the Senator from Iowa [Mr. CUMMINS] covering this subject. That amendment was divided into two parts. One part has already been adopted, being an addition to section 5, providing that no order made under that section shall be admissible as evidence in any suit under the antitrust acts. That amendment has been adopted. The remaining portion was accepted by the committee as an additional section, and is in the language read at the desk. It is simply for the purpose of absolutely insuring the fact that this bill does not in any way affect or interfere with the enforcement of the antitrust laws.

Mr. BRANDEGEE. I have no objection whatever to it, except that I consider it purely surplusage.

Mr. LIPPITT. I should like to ask if this is a committee amendment or a personal amendment?

Mr. NEWLANDS. It is a committee amendment.

Mr. LIPPITT. When was it adopted by the committee?

Mr. NEWLANDS. It was recommended by the committee at a recent meeting, a week or so ago.

Mr. LIPPITT. Where was that committee meeting held?

Mr. NEWLANDS. It was held at the office of the committee in the Senate Office Building.

The VICE PRESIDENT. The question is on the adoption of the amendment of the Senator from Nevada to the amendment of the committee.

The amendment to the amendment was agreed to.

Mr. NEWLANDS. I have another amendment, a committee amendment, to offer, and that is the insertion, in line 9, page 17, after the word "commerce," of the words "relating to or in any way affecting the commerce in which such corporation under inquiry is engaged."

That amendment is offered in response to the criticism upon the phraseology of subdivision (a) of section 3, made by the Senator from Utah [Mr. SUTHERLAND]. As amended it will read as follows:

Subdivision (a) To investigate from time to time, and as often as the commission may deem advisable, the organization, business, financial condition, conduct, practices, and management of any corporation engaged in commerce relating to or in any way affecting the commerce in which such corporation under inquiry is engaged, and its relation to other corporations and to individuals, associations, and partnerships.

The VICE PRESIDENT. The question is on the adoption of the amendment to the amendment.

Mr. BRANDEGEE. Mr. President, I may not have understood the amendment correctly as read; but before asking for the rereading of it I will state that it seems to me it does not meet the suggestion raised by the Senator from Utah for this reason: The commerce in which the corporation may be engaged may be both intrastate and interstate, and I do not think the amendment is appropriate. If the corporation is engaged in both intrastate commerce and commerce among the States, then what good does the amendment of the Senator from Nevada do that they shall investigate the practices of the party in relation to the commerce in which it is engaged?

Mr. NEWLANDS. The word "commerce," the Senator will recollect, is defined in lines 14 and 15, on page 13, as follows:

"Commerce" means such commerce as Congress has the power to regulate under the Constitution.

Mr. BRANDEGEE. I know.

Mr. NEWLANDS. The commerce there referred to is interstate and foreign commerce.

Mr. BRANDEGEE. If the effect of this amendment is to restrict the investigation of the commission to the practices of a corporation engaged in commerce among the States, I have no objection to it, of course.

The PRESIDENT pro tempore. The question is on the adoption of the amendment.

Mr. GALLINGER. Let the amendment be read. It has not been read at the desk.

The PRESIDENT pro tempore. It will be read.

The SECRETARY. On page 17 of the proposed committee amendment, line 9, after the word "commerce" and the comma, insert the words "relating to or in any way affecting the commerce in which such corporation under inquiry is engaged."

Mr. SUTHERLAND. Mr. President, that would seem to take care of the provisions of subdivision (a) in that particular down to where the insertion is made; but what does the Senator say of the succeeding language and its relation to other corporations and to individuals, associations, and partnerships? Does the Senator desire to limit it in one particular and leave it unlimited in the other?

Mr. NEWLANDS. The committee is satisfied with that subdivision.

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from Nevada to the amendment of the committee.

The amendment to the amendment was agreed to.

Mr. NEWLANDS. I will also offer to amend the title of the bill so as to read: "An act to create a Federal trade commission, to define its powers and duties, and for other purposes."

Mr. GALLINGER. That will come later.

The PRESIDENT pro tempore. The question on the amendment of the title will come after the bill has been disposed of. The question now is on agreeing to the amendment of the committee as amended.

Mr. CUMMINS. I offer the following amendment as section 6 of the bill.

Mr. OVERMAN. Is it in lieu of section 6?

Mr. CUMMINS. No.

Mr. OVERMAN. It is another section 6?

Mr. CUMMINS. The other sections are to be numbered consecutively thereafter.

The PRESIDENT pro tempore. The Secretary will read the amendment to the amendment.

The SECRETARY. On page 21, after the amendment already agreed to at that point, in line 22, insert as section 6 the following:

SEC. 6. It shall be unlawful for any corporation engaged in commerce to acquire, own, hold, or control, either directly or indirectly, the whole or any part of the capital stock, or other share capital, or any other means of control or participation in the control, of any other corporation also engaged in commerce if the business of such corporations is naturally and by reason of character and location competitive.

The commission is hereby empowered and directed to forbid and prevent such unlawful conditions in commerce in the manner following, to wit:

Whenever it shall have reason to believe that any corporation so engaged in commerce has acquired or is owning, holding, or controlling, either directly or indirectly, the whole or any part of the capital stock, or other share capital, or any other means of control or participation in the control of any other corporation also engaged in commerce, and that the business of the two or more corporations is naturally and by reason of character and location competitive, it shall issue and serve upon the corporation a complaint stating its charges in that behalf and at the same time a notice of hearing upon a day and at a place therein fixed. The corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such corporation to cease and desist from the violation of the law so charged in said complaint. If upon such hearing the commission shall find that such corporation has acquired or is holding, owning, or controlling the capital stock, or other share capital, or other means of control or participation in the control of any other corporation contrary to the provisions of this section it shall thereupon enter its findings of record and issue and serve upon the corporation an order requiring that within a reasonable time, to be stated in such order, that the corporation shall cease and desist from acquiring, owning, holding, or controlling the whole or any part of the capital stock, or other share capital, or other means of control, or participation in the control of such other corporation or corporations.

The commission may at any time set aside, in whole or in part, or modify its findings or order so entered or made. Any suit brought by any corporation to annul, suspend, or set aside, in whole or in part, any such order of the commission shall be brought against the commission in a district court of the United States in the judicial district wherein the complainant corporation has its principal office or place of business, and the procedure set forth in the act of Congress making appropriations to supply urgent deficiencies and insufficient appropriations for the fiscal year of 1913, and for other purposes, relating to suits brought to suspend or set aside, in whole or in part, an order of the Interstate Commerce Commission shall govern the procedure in such cases.

If within the time so fixed in the order of the commission the corporation against which the order is made shall not cease and desist from the acquisition, owning, holding, or controlling of the whole or any part of the capital stock or other share capital or other means of control or participation in the control of such other corporation or corporations and comply with the order of the commission by bringing itself in such respect into conformity with the law, and if in the meantime such order is not annulled, suspended, or set aside by a court, the commission may bring a suit in equity in the district court of the United States in any district wherein the defendant corporation has its principal office or place of business to enforce its said order, and jurisdiction is hereby conferred upon such court to hear and determine any such suit and to enforce obedience to any such order according to the law and rules applicable to suits in equity.

All the provisions of the law relating to place and advancements for speedy hearing in suits brought to suspend or set aside an order of the Interstate Commerce Commission shall apply in suits brought under this section: *Provided*, That this section shall not apply to banks, banking institutions, or common carriers: *Provided further*, That no order or finding of the court or commission in the enforcement of this section shall have any force or effect or be admissible as evidence in any suit, civil or criminal, brought under the antitrust acts.

The PRESIDENT pro tempore. The question is on the adoption of the amendment offered by the Senator from Iowa to the amendment of the committee.

Mr. OVERMAN. Is not that amendment covered by section 8 of the antitrust bill reported by the Judiciary Committee?

Mr. CUMMINS. I was about to make some observations in regard to the question just propounded by the Senator from North Carolina. The subject is dealt with——

Mr. POMERENE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Ohio?

Mr. CUMMINS. I will yield if the Senator will wait until I finish my sentence. The subject is dealt with in the bill reported by the Judiciary Committee known as the Clayton bill. I now yield to the Senator from Ohio.

Mr. POMERENE. Mr. President, with the permission of the Senator from Iowa, I wish to say that a number of the members of the Committee on Interstate Commerce, with the very valued assistance of the junior Senator from Montana [Mr. WALSH], have redrafted section 5 of this bill. Not intending to take the time of the Senator from Iowa now, I ask that the section as redrafted may be ordered printed and lie on the table, to be called up at a later hour in the day.

The PRESIDENT pro tempore. The Senator from Ohio offers an amendment, which will be printed and lie on the table.

Mr. NEWLANDS. Mr. President, I presume the Senator from Ohio did not wish to give the impression that the amendment as drawn has been as yet accepted by the Interstate Commerce Committee?

Mr. POMERENE. Oh, Mr. President, I had no such intention. I simply stated that the amendment was drawn up after a conference held by a number of the members of the committee and the Senator from Montana [Mr. WALSH]. Lest there be any misunderstanding at all about it, I desire to say that the amendment, as redrafted, has not as yet been acted upon by the committee.

Mr. GALLINGER. Does the Senator from Ohio offer the amendment in his own name?

Mr. POMERENE. I simply give notice of my intention to offer it at a later hour.

Mr. CUMMINS. Mr. President, as I said, the subject of the amendment which I have just offered is embraced in the Clayton bill. I have offered the amendment for two reasons: First, because I think the legislation upon that subject ought to be a part of the bill now under consideration rather than a part of the Clayton bill; second, because I am not at all satisfied with the provisions of the bill reported by the Judiciary Committee.

It will be observed that I have excepted from the operation of this amendment banks, banking institutions, and common carriers.

Mr. OVERMAN. So has the Judiciary Committee in the bill reported by them.

Mr. CUMMINS. I have excepted the latter because I believe that the provisions of the bill with regard to common carriers ought to be a part of the interstate-commerce act, and I intend

to offer an amendment in substantially similar terms applicable to common carriers when we reach the consideration of what is known as the railroad securities bill, which is a revision of certain parts of the interstate-commerce law.

With regard to banks and banking institutions, whatever changes we make in the law with regard to them, in my judgment, should be made in the banking and currency law, and the enforcement of such provisions should be committed to the Federal Reserve Board.

The difference between the provision of the Clayton bill and the provisions of the amendment which I have just offered, so far as the substantive law is concerned, I mean—entirely apart from the commission and the procedure before the commission and the jurisdiction of the courts and the procedure in the court—lies principally in two things. I will be compelled to take up for consideration in a degree the provisions of the Clayton bill in order to indicate in what respects my amendment differs from the Clayton bill. The subject is covered in section 8 of the measure to which I have just referred. Section 8 provides:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce.

I pause in the reading to point out the first difference. It will be seen that the Clayton bill renders unlawful the future acquisition of stock or of share capital. It does not attempt to regulate those instances in which corporations have already acquired and now hold the capital stock of competitive corporations. I regard that as a fatal weakness. The people of this country will not be satisfied with a mere prohibition against acquisitions of stock made by these corporations in the future; it is the existing condition of which they complain. They desire to be relieved of some of the hardships, some of the wrongdoing which grows out of the absorption by one corporation of the stock of another engaged in a competitive business. If we are to withhold our hands and make no effort to readjust the onerous and hard conditions which have grown up we might almost as well abandon all regulation of the subject.

Mr. President, it must not be assumed that I am suggesting that there should be a confiscation of any stock now held by any corporation contrary to the provisions of my amendment. My contention is that corporations which apparently are independent, but which are, in fact, inter-related in the way I have described, ought to divorce themselves and pursue an independent course; that if a corporation owns the stock of another engaged in similar business, within some reasonable time, which I have provided for in my amendment, to be prescribed by the commission, the corporation shall sell or otherwise dispose of that stock, the holding of which constitutes a violation of the principle we are endeavoring to announce and enforce. There can be no hardship to a corporation in requiring it to observe that principle. If it is against public policy that a corporation shall in the future control another through the medium of the ownership of its capital stock, it is likewise against public policy that a corporation which now holds this means of control shall continue to hold it.

I put the question to the Senate by my amendment so sharply that it can not be misunderstood, and I intend that the people of this country shall understand the difference between a provision which simply prohibits future acquisitions of stock under such circumstances and a provision which compels a corporation holding the stock of another corporation in violation of the principle established to part with that capital stock and to bring itself into harmony with the policy that we are now establishing.

Mr. CHILTON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from West Virginia?

Mr. CUMMINS. I yield.

Mr. CHILTON. The Senator recognizes, does he not, that both the trade commission bill and the Clayton bill proceed upon the theory, expressed in both of them now, that no part of the Sherman law shall be amended or modified by anything contained in either or both of them?

Mr. CUMMINS. I think so.

Mr. CHILTON. Does the Senator not think that holding companies and the owning of the stock of one corporation by another so as to lessen competition already come within the purview of the Sherman law?

Mr. CUMMINS. I do not.

Mr. CHILTON. The Senator does not agree to that?

Mr. CUMMINS. Not at all.

Mr. CHILTON. If such practices restrict trade or lessen trade or create or tend to create monopoly, do they not come within the Sherman law?

Mr. CUMMINS. They then do.

Mr. CHILTON. Well, does the Senator think we have any jurisdiction over such a practice, if it does not restrain trade?

Mr. CUMMINS. Unquestionably we have—that is, from my standpoint.

Mr. CHILTON. I merely wanted to get the Senator's position.

Mr. CUMMINS. We have no constitutional or moral right to confiscate the property of a person or of a corporation, nor would any Senator tolerate the suggestion; but we have the right to prescribe the conditions upon which a corporation shall engage in commerce among the States, and one of those conditions ought to be that the corporation is not holding the stock or other means of control of another corporation with which it is ostensibly in competition.

In response further to the Senator from West Virginia, I may say that the mere purchase on the part of one corporation of the stock of another engaged in competition is not a violation of the antitrust law. There may be a dozen or 20 corporations engaged in the same business, and it is the commonest thing known that 1 of these 20 shall own the stock of 1, 2, or 3 of the others; it is a favorite method of consolidation, of unifying the control; but that does not establish restraint of trade; that does not establish monopoly, although the practice is plainly opposed to public policy. I have now named the first respect in which my amendment differs from the provision in the bill reported by the Judiciary Committee.

The second respect is that in the Clayton bill the standard set up as the test of illegality is this:

Where the effect of such acquisition is to eliminate or substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to create a monopoly of any line of commerce.

Of course the latter, Mr. President, is purely superfluous, because whenever there is anything done that creates a monopoly in any line of commerce it falls within the prohibition of the antitrust law; but in order to make the acquisition even in the future unlawful, the Government must show that the effect of the acquisition is either to eliminate or to substantially lessen competition. While every sensible man knows that the ownership by one corporation of the stock of another does eliminate to a great extent competition and does substantially lessen competition, it will be practically impossible in 99 cases out of 100 for the Government to show that the effect of the stockholding upon the part of the one corporation destroys competition between it and another corporation. It is one of those things that are not susceptible of proof; and if I were not well assured of the patriotic purposes of the men who used that expression in the original bill as it came from the House, I could not resist the belief that its use was intended to delude the people of the country into the belief that we are doing something for them, when, as a matter of fact, we are doing nothing at all.

I regard the proposal as it is now in the Clayton bill as a "gold brick." It can have no beneficial effect; it will be innocuous and its enforcement will, in my judgment, never be attempted; for if Senators will simply busy their minds in attempting to imagine or in attempting to forecast what proof the Government must bring forward in order to show that the ownership of the stock of one corporation by another has actually lessened competition between those two corporations, they will perceive at once how difficult if not impossible the task will be. I can not think that Senators desire to approve the custom of business through which one corporation holds the stock of another, the two corporations being engaged in the same kind of commerce or traffic. Why should one corporation hold the stock of another when they are engaged in a common business? I challenge an answer to that question. I want somebody who believes in the provision of the Clayton bill to answer the question, Why should one corporation be permitted to hold the stock of another?

Mr. CHILTON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from West Virginia?

Mr. CUMMINS. I yield to the Senator from West Virginia.

Mr. CHILTON. In no sense accepting the challenge of the Senator, I want to call his attention to the discussion in which the Senator engaged in the Committee on the Judiciary. In the first place, the Senator will recall that the committee discussed very fully the constitutional difficulty in the way of going that far under the interstate-commerce clause of the Constitution. The Senator will further recall the fact that it was shown before the committee—and there is no doubt about it being true—that some of the States specifically authorize one corporation to hold the stock of another; for instance, the State of West Virginia under its laws specifically authorizes one corporation to hold the stock of another. It is recognized that whatever may be

the construction of the Sherman antitrust law upon that point and whatever may be our opinion as to the manner in which it has been enforced, the fact is that such holdings exist.

This legislation is in part experimental. Everybody recognizes that we are going out into a field to try to give relief to the people in obedience to the promise of political parties and in answer to what seems to be a public demand growing out of a danger to commerce. Now, we find this condition: There are hundreds of thousands of corporations, and it has been proved by the evidence taken that many of these corporations probably own the stock of other corporations. That is a condition which has grown up; whether right or wrong, it is here.

In the first place, we had to consider the possible disturbance of business involved in making a rule at least of doubtful propriety. It is very doubtful whether or not we have the constitutional power to go into the States and say, "Notwithstanding the fact that you have a law here which permits a corporation engaged in business to own the stock of another corporation, we say by a law of Congress that that shall not be permitted, and, notwithstanding the fact that you have built up a business here, notwithstanding the fact that you have acquired a large amount of property, we are going to say from now on not only that you shall not own the stock of another corporation but that you must unscramble this condition which has grown up under the laws of the State and under the permission of the Federal Government."

The general rule is that all laws shall have a prospective effect. It is very unusual for Congress to enact a law reaching a condition which has grown up in the past under authority of law. The usual rule is that laws have a prospective and not a retrospective effect, and we did not think that the reasons urged before the committee were sufficient to make an exception at this time. We thought it very doubtful whether or not we had the power to go as far as does the amendment. In the second place, we thought it very doubtful whether or not it would be best for the country, for all of the people, if it should be done, even if we did have the power. In the third place, we thought it very doubtful whether or not there should be brought about that kind of a conflict between the laws of the States and the regulation of commerce now to be made by the Congress of the United States.

Mr. CUMMINS. Well, Mr. President, I never heard the constitutional question suggested. I can not believe that there is any real doubt with regard to the power of Congress to prescribe a rule of that character. Otherwise, we have no power to regulate commerce; otherwise, our power to regulate commerce is subordinate to the legislation and sovereignty of the States. The Senator from West Virginia can not doubt our right to say that no monopoly shall exist, even if the law of a State permitted monopoly. Of course the law of a State can not declare what shall be done or not done in interstate commerce. The law of the State is supreme only with regard to its own affairs. It is supreme with respect to its own commerce, but it can not limit or prescribe the extent to which Congress may go in regulating interstate commerce. Upon interstate commerce the power of Congress is as unquestioned and unlimited as is the power of the State with regard to intrastate commerce; and that we can say that it shall be unlawful for any corporation holding the stock of another and competitive corporation to engage in interstate commerce I feel is so certain that it must be accepted as a fundamental proposition.

Mr. THOMAS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Colorado?

Mr. CUMMINS. I yield.

Mr. THOMAS. If that be done, I am in entire accord with the Senator. That is precisely the course which I think this legislation should take. This amendment is one which goes very far toward satisfying my views as to the character of our national antitrust legislation. The principal criticism I have to make of the amendment is that it does not prohibit all corporations engaged in interstate commerce business from holding stock in any other corporation. I do not think a corporation should be permitted to hold stock in any other corporation. It is foreign to the purposes for which it is created and must necessarily lead to the control, or at least to the influencing, of the operations and policy of the corporation in which the stock is held.

Mr. CUMMINS. I go quite as far as the Senator from Colorado. It was the common law. It is now the opinion of the ablest students of the whole subject as they review the wonderful growth of corporate power and the intertwining of corporate interests, so that by accumulating into one corporation the stock, or a part of the stock, of many others a monopoly is easily effected.

I am in favor of absolutely prohibiting any corporation from owning the stock of any other corporation whether competitive or not if the acquiring corporation desires to engage in commerce among the States; but I have not sought to do that in my amendment. I have limited it to those cases in which the two corporations or more are engaged in business that ought to be competitive, and my whole desire is to strengthen the competitive force in the business of the United States.

There can be no reason given for the amendment as limited by the Judiciary Committee except this, that we do not want to further disturb these monopolistic powers, and want to leave them to be dealt with only by the antitrust law. I concede that it leaves them subject to the antitrust law.

I have no apprehension with regard to the alleged disturbance. There are no hundred thousand corporations in this country holding the stock of other competitive corporations. There is not a line in the evidence anywhere that indicates any such thing. There are a great many of them, I agree. Some of the most prominent of them are well known upon the floor of the Senate. I remember hearing just the other day a most graphic story with regard to the International Harvester Co. It had acquired the stock, the means of control, of another and competitive corporation. It permitted the latter corporation to go on and do business as an independent, intending that the public should believe that there was rivalry between the two, and in that way endeavored to compose and alleviate some of the complaints that are not only Nation-wide, but world-wide, against consolidations of that character. Yet under this bill, so far as this amendment is concerned, the International Harvester Co. could continue to hold the stock of these other corporations and continue this course of deception and fraud which characterized its business for a period at least.

Mr. CHILTON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from West Virginia?

Mr. CUMMINS. I yield.

Mr. CHILTON. I have no controversy with the Senator as to the great desirability of abolishing the holding company. I think it is a great abuse, and, so far as I am concerned, the Senator knows that he and I would have no controversy whatever on that subject. But, Mr. President, the power of the Congress is limited to interstate commerce; and assuredly the Senator does not mean to say that there has been no controversy as to where the power of the Federal Government shall end and the power of the State shall begin, or, vice versa, where the power of the State shall end and where the power of the Federal Government shall begin.

In every question and in every law, in every discussion of this subject, we have got to meet the fact that we can deal only with interstate commerce. Now, the Senator certainly will recollect the argument that if we can deal with the organization of a corporation we can deal with its plant. If we can deal with its plant we can deal with its men. If we can deal with its men we can regulate their hours of employment. If we can regulate their hours of employment we can say who shall work and who shall not.

In other words, certainly the Senator does not mean to say that the power to regulate interstate commerce goes to the extent of allowing Congress to go down into the States and regulate the hours and conditions of labor and the conditions of employment in the States. In the opinion of many these things would be as much a part of interstate commerce as would be the regulation of the organization of a corporation created by the State, regulated by the State, which must go to the State for its powers and must go to the laws of the State for the charter of its existence, and where it can work, and what it can do.

If we can go into a State and regulate all such affairs of corporations, many contend that we can go still further and can regulate every one of the conditions of employment as well as the conditions and means of manufacture. On that point we did think there was a serious controversy; and to show the Senator——

Mr. CUMMINS. Will the Senator pause for a moment just at that point?

Mr. CHILTON. Yes.

Mr. CUMMINS. The argument the Senator has just been making is as potent against what the committee has done as against what I think ought to be done.

If it is not a valid regulation of interstate commerce to say that it shall be unlawful for a corporation engaged in such commerce to hold the capital stock of another corporation; if

that can not be done, neither can you say to the corporation: "You shall not in the future acquire capital stock of a corporation engaged likewise in commerce." If that is a matter for State regulation alone, we can neither interfere with it, as has been done in the past, nor can we prevent it if it is attempted in the future.

I never heard our authority in that respect questioned. I have often heard it questioned whether we could regulate hours of labor, and I have heard it questioned whether we could regulate the issues of stock and bonds, and things of that sort; but I never heard it questioned that Congress could lay down any rule that was necessary to preserve the freedom of commerce, to preserve competition in business. The Senator from West Virginia is the first Senator I have ever heard challenge that proposition.

Mr. CHILTON. Mr. President, I certainly have heard it questioned in the committee; and I want to call the Senator's attention to this fact:

The language of the Clayton bill confines it to matters as to which there is no doubt about the power of Congress. There can be no question, under the decisions now, as to the power of Congress wherever the act substantially lessens competition or restrains trade. We are following in a beaten path when we go that far.

Mr. CUMMINS. In what beaten path?

Mr. CHILTON. I will ask the Senator what he thinks of this proposition: Suppose it were lawful for a corporation to buy stock in another corporation a year ago; suppose it were lawful under the laws of the United States and under the laws of the States. Could you, by any act now, divest it of that property?

Mr. CUMMINS. No.

Mr. CHILTON. Could you take from it a vested right?

Mr. CUMMINS. No, Mr. President; we could not.

Mr. CHILTON. Does not that present essentially a constitutional question?

Mr. CUMMINS. Not at all. We can not divest them of the property, but we can say to them, "If you do not get rid of that property you can not continue to engage in interstate commerce."

Mr. CHILTON. Is that what the Senator's amendment says?

Mr. CUMMINS. That is precisely what it says.

Mr. CHILTON. I do not so understand it.

Mr. CUMMINS. That it shall be unlawful for a company to continue to engage in interstate commerce if these things are true.

Mr. CHILTON. Mr. President, while I am on my feet, if the Senator will pardon me, upon the other point to which I called his attention——

Mr. CUMMINS. Certainly.

Mr. CHILTON. I do not want to read it, but I should like to put in the RECORD, simply as the authority for the question which I raised as to the constitutionality of the proposed legislation, a quotation from the decision——

Mr. CUMMINS. I do not yield for that purpose. I am perfectly willing that any authority, any case which the Senator has in mind, shall be put in, but——

Mr. CHILTON. Without reading, I mean.

Mr. CUMMINS. I would rather the Senator from West Virginia would put it in in his own time.

Mr. CHILTON. Very well, then.

Mr. CUMMINS. For that would be to put in my argument the argument of some one else. I would be necessarily required then to pause to consider it and answer it if I could.

Mr. President, for these two reasons, which seem to me very grave reasons, I have offered my amendment. I do not intend to debate the matter further. It seems to me the merit of what I have said is so obvious that it ought not to be required of me that I should consume further time to demonstrate its soundness and wisdom. I simply want Senators to feel, as I want the country to know, that when they vote against this amendment and in favor of the amendment proposed by the Judiciary Committee they are legalizing, in so far as they can, the iniquities of the past.

Mr. OVERMAN. Mr. President, if the Senator is in earnest about this—and I know he is—instead of offering his amendment to the trade commission bill, I think he might amend section 8 of the other bill by adding simply one word or two words, which would accomplish exactly what he wants.

Mr. CUMMINS. It would. It would cover that point.

Mr. OVERMAN. So as to make it read:

That no corporation engaged in commerce shall own, directly or indirectly, the whole or any part of the stock—

And so forth.

Mr. CUMMINS. Certainly.

Mr. OVERMAN. That is all you have to put in there—the word "own."

Mr. CUMMINS. The Senator from North Carolina remembers, I am sure, that in the Judiciary Committee—if I am permitted to speak of it—the amendment he has now outlined was unanimously adopted. There was no dissent whatever. Then, at some time—I did not happen to be present at that time—it was stricken out, and I was amazed when I discovered that the members of the committee had changed their minds in that regard. Still, the amendment just suggested by the Senator from North Carolina, while it would tremendously improve the section, and while it would cure the one defect which we have been discussing, would not remove what I regard as a serious mistake in the standard which is sought to be applied in order to determine whether one corporation can hold the stock of another.

I do not believe there should be put upon the people of this country the burden of proving that ownership on the part of one corporation of stock of another and competitive corporation has the effect of lessening competition between them before any remedy can be administered. You know, every Senator knows, that where one corporation holds the stock of another, and where they are engaged in the same kind of business, it is against public policy, and that does result in destroying competition between them. It may be impossible to prove it. I think in most instances it would be impossible to establish it; but down in our hearts we all know, and the whole American people know, that a relation of that sort does destroy independence of action and that full, complete, and vigorous competition to which we are entitled in the commerce of the country.

I do not intend to pursue my amendment and point out the difference between the method of enforcing the law as shown in the report of the Judiciary Committee and as set forth in the amendment that I have proposed. That question, I assume, will arise upon another amendment. When it does arise I expect to point out my views somewhat fully and express my opinions as to the best procedure, both in the commission and in the courts, for the enforcement of the law. Just now I am concerned only in the two things: First, the escape of all corporations which now hold the stock of their rivals in business; and, second, in requiring the Government to prove that the effect has been to lessen competition before the law declares the relation illegal.

Mr. CHILTON. Mr. President, just at this point I should like permission to put into the RECORD the quotation from the decision of the Supreme Court in the case of Kidd *v.* Pearson (128 U. S., 1), being part of the decision of Mr. Justice Lamar, to which I referred during the remarks of the Senator from Iowa, and I did not object that he preferred not to have it made part of his speech.

The PRESIDENT pro tempore. Without objection, permission is granted.

The matter referred to is as follows:

In the case of Kidd *v.* Pearson (128 U. S., 1), Justice Lamar, writing the opinion of the court, says (p. 16):

"The line which separates the province of Federal authority over the regulation of commerce from the powers reserved to the States has engaged the attention of this court in a great number and variety of cases. The decisions in these cases, though they do not in a single instance assume to trace that line throughout its entire length, or to state any rule further than to locate the line in each particular case as it arises, have almost uniformly adhered to the fundamental principles which Chief Justice Marshall, in the case of Gibbons *v.* Ogden (9 Wheat., 1), laid down as to the nature and extent of the grant of power to Congress on this subject, and also of the limitations, express and implied, which it imposes upon State legislation, with regard to taxation, to the control of domestic commerce, and to all persons and things within its limits of purely internal concern.

"According to the theory of that great opinion the supreme authority of this country is divided between the Government of the United States, whose action extends over the whole Union, but which possesses only certain powers enumerated in its written Constitution, and the separate governments of the several States, which retain all powers not delegated to the Union. The power expressly conferred upon Congress to regulate commerce is absolute and complete in itself, with no limitations other than are prescribed in the Constitution; is to a certain extent exclusively vested in Congress, so far free from State action; is coextensive with the subject on which it acts, and can not stop at the external boundary of a State, but must enter into the interior of every State whenever required by the interests of commerce with foreign nations, or among the several States. This power, however, does not comprehend the purely internal domestic commerce of a State which is carried on between man and man within a State or between different parts of the same State.

"The distinction is stated in the following comprehensive language: "'The genius and character of the whole Government seem to be that its action is to be applied to all the external concerns of the Nation and to those internal concerns which affect the States generally, but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the Government. The completely internal commerce of a State, then, may be considered as reserved for the State itself' (p. 195).

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"No distinction is more popular to the common mind or more clearly expressed in economic and political literature than that between manu-

factures and commerce. Manufacture is transformation, the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce, and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term as given by this court in County of Mobile *v.* Kimball (102 U. S., 691, 702) is as follows: 'Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market?

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"The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of the delicate, multiform, and vital interests, interests which in their nature are and must be local in all the details of their successful management.

* * * * * * *

"This being true, how can it further that object so as to interpret the constitutional provision as to place upon Congress the obligation to exercise the supervisory powers just indicated? The demands of such a supervision would require, not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent. Any movement toward the establishment of rules of production in this vast country, with its many different climates and opportunities, could only be at the sacrifice of the peculiar advantages of a large part of the localities in it, if not of every one of them. On the other hand, any movement toward the local, detailed, and incongruous legislation required by such interpretation would be about the widest possible departure from the declared object of the clause in question. Nor this alone. Even in the exercise of the power contended for Congress would be confined to the regulation, not of certain branches of industry, however numerous, but to those instances in each and every branch where the producer contemplated an interstate market. These instances would be almost infinite, as we have seen; but still there would always remain the possibility—and often it would be the case—that the producer contemplated a domestic market. In that case the supervisory power must be executed by the State, and the interminable trouble would be presented that whether the one power or the other should exercise the authority in question would be determined, not by any general or intelligible rule, but by the secret and changeable intention of the producer in each and every act of production. A situation more paralyzing to the State governments and more provocative of conflicts between the General Government and the States, and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine.

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"These questions are well answered in the language of the court in the license-tax cases (5 Wall., 462, 470): 'Over this commerce and trade (the internal commerce and domestic trade of the States) Congress has no power of regulation, nor any direct control. This power belongs exclusively to the States. No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature. The power to authorize a business within a State is plainly repugnant to the exclusive power of the State over the same subject.'"

In Wilkerson *v.* Rahrer (140 U. S., 545) the justice, in writing the opinion of the court, says (p. 554):

"The power of the State to impose restraints and burdens upon persons and property in conservation and promotion of the public health, good order, and prosperity is a power originally and always belonging to the States, not surrendered by them to the General Government nor directly restrained by the Constitution of the United States, and essentially exclusive.

"And this court has uniformly recognized State legislation, legitimately for police purposes, as not in the sense of the Constitution necessarily infringing upon any right which has been confided expressly or by implication to the National Government.

"The fourteenth amendment, in forbidding a State to make or enforce any law abridging the privileges or immunities of citizens of the United States, or to deprive any person of life, liberty, or property without due process of law, or to deny to any person within its jurisdiction the equal protection of the laws, did not invest and did not attempt to invest Congress with power to legislate upon subjects which are within the domain of State legislation.

"As observed by Mr. Justice Bradley, delivering the opinion of the court in the Civil Rights cases (109 U. S., 3, 13), the legislation under that amendment can not 'properly cover the whole domain of rights appertaining to life, liberty, and property, defining them and providing for their vindication That would be to establish a code of municipal law regulative of all private rights between man and man in society. It would be to make Congress take the place of the State legislatures and to supersede them. It is absurd to affirm that, because the rights of life, liberty, and property (which include all civil rights that men have) are by the amendment sought to be protected against invasion on the part of the State without due process of law, Congress may therefore provide due process of law for their vindication in every case; and that, because the denial by a State to any persons of the equal protection of the laws is prohibited by the amendment, therefore Congress may establish laws for their equal protection.'

"In short, it is not to be doubted that the power to make the ordinary regulations of police remain with the individual States and can not be assumed by the National Government, and that in this respect it is not interfered with by the fourteenth amendment. (Barbier *v.* Connolly, 113 U. S., 27–31.)

"'Commerce undoubtedly is traffic,' said Chief Justice Marshall, 'but it is something more; it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches and is regulated by prescribing rules for carrying on that intercourse.' Unquestionably, fermented, distilled, or other intoxicating liquors or liquids are subjects of commercial intercourse, exchange, barter, and traffic between nation and nation and between State and State, like any other commodity in which a right of traffic exists, and are so recognized by the usages of the commercial world, the laws of Congress, and the decisions of courts. Nevertheless, it has been often held that State legislation which prohibits the manufacture of spirituous, malt, vinous, fermented, or other intoxicating liquors within the limits of a State, to be there sold or bartered for general use as a beverage, does not necessarily infringe any right, privilege, or immunity secured by the Constitution of the United States or by the amendments thereto. (Mugler *v.* Kansas, 123 U. S., 632, and cases cited.) 'These cases,' in the language of the opinion in Mugler *v.* Kansas (p. 659), 'rest upon the acknowledged right of the States of the Union to control their purely internal affairs, and in so doing to protect the health, morals, and safety of their people by regulations that do not interfere with the execution of the powers of the General Government or violate rights secured by the Constitution of the United States.' The power to establish such regulations, as was said in Gibbons *v.* Ogden (9 Wheat., 1, 203), reaches everything within the territory of a State not surrendered to the National Government."

Mr. WALSH. Mr. President, the question presented by the amendment offered by the Senator from Iowa introduces into the discussion at this time practically the wisdom of the provision made in the Clayton bill to meet the evil to which the amendment is addressed.

It occurs to me that the decision of that question ought to wait until we have the Clayton bill before us for consideration. I do not mean to assert that the subject is not quite as germane to the trade commission bill as it is to the so-called antitrust or Clayton bill; but I think everyone will recognize that in order to arrive at results in this proposed legislation we ought to adhere as closely as we can, consistently with the preparation of proper measures, to the bills which have come to us from the House. I think it would be eminently unwise to transport a whole subject matter from the Clayton bill, for instance, and give it a place in the trade commission bill, separate and apart from the other provisions of the Clayton bill to which it must bear a more or less direct relation.

I would not like to have it understood that, speaking for myself at least, I do not consider as having very great force indeed the suggestions made in this behalf by the distinguished Senator from Iowa. As has been said by him, both of these subjects received consideration by the Judiciary Committee. I do not think I was myself present when the change was made which eliminated the amendment prohibiting the holding as well as the acquisition by a corporation of the stock of a competing company, and I am disposed to believe that the Senator from Iowa was not present—that is my recollection, at least—when final consideration was given to the other feature of the section which has been made subject to his criticism.

I call the attention of the Senator, however, to the fact that the whole purpose of the amendment now offered by him, so far as it is intended to correct what he believes to be defects in section 8 of the Clayton bill, can be met by just a simple change in the language of section 8; and it occurs to me that that would be the advisable course, rather than to inject into this bill the very extensive provisions which are found in the amendment now offered by the Senator from Iowa.

Mr. CUMMINS. Mr. President, I realize the force of what the Senator from Montana is saying, as I have realized the embarrassment of trying to deal with these subjects in two independent bills. The reason I have offered this amendment—and I had hoped, really, that the subject would be considered by the Judiciary Committee or those who are in charge of affairs upon the other side—is this:

I believe that interlocking directorates and the holding of the stock of one corporation by another are two of the great evils that need a remedy. I am sure the Senator from Montana will agree with me about that. If we deal with them in the Clayton bill and commit their enforcement to a trade commission, as the Clayton bill does, what would be our situation if the trade commission bill should not become a law? We would have done, as it seems to me, one of the most ridiculous things that can be imagined of a legislative body.

It is clear to me that these things which are inseparably connected with the trade commission, that depend for their life upon the action of the trade commission, ought to be in the trade commission bill, so that they will all become law together. That seems to be a very logical and reasonable suggestion.

Mr. WEST. Why not consolidate and unify the two into one, then?

Mr. CUMMINS. I answer the Senator from Georgia that I have been from the beginning earnest in the effort to consolidate them. Our committee, the Interstate Commerce Committee, originally voted to report the section that I have just read, not in terms but covering that subject, as a part of this bill as well as that relating to interlocking directorates. I knew that we would be in just the position we now find ourselves if we did not embody all such legislation in one measure. I do not want to be an obstructionist; I want to help bring this legislation into the wisest possible form; but I can not imagine how it would

hurt—I can see how it would help—if sections 8 and 9 of the Clayton bill were lifted out of that measure and put into the trade commission bill.

Mr. WALSH. Mr. President, I will say to the Senator from Iowa that I would not be prepared to dispute that it might not be as appropriately placed there. Indeed were we called upon originally to draft these measures perhaps we might deem it wise to put it there, but I submit it is simply a question into which bill the subject ought to be treated. It is treated in the Clayton bill as it comes to us, and I can see no good reason now for departing from the consideration of it in connection with that measure, particularly, Mr. President, as the objections the Senator now offers to the bill can be presented by a very simple amendment to section 8 of the Clayton bill when that comes up for consideration. For instance, to consider the last objection that is made first, I shall myself, being in entire accord with the Senator from Iowa in respect to that matter, offer to amend that by simply putting the word "competing" in line 15 between the words "another" and "corporation," so that section 8 will read:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another competing corporation.

That meets all the requirements of the case. I appreciate the justice of the criticism which is offered with respect to this matter. Even in the antitrust cases it is not necessary to establish that, by reason of the combination or conspiracy that is attacked, competition has actually been lessened or that monopoly has actually been established, if by reason of the combination or the contract the power is given to suppress competition, if those controlling it desire to exercise that power. So here the power being acquired by the acquisition of the stock, the acquisition of the stock of the competing company ought to be condemned by the law, in my humble judgment.

I simply desire to say that in voting against the amendment now offered by the Senator from Iowa I should not like to be understood as opposing the principle that he embodies, but simply as expressing the idea that it ought to be taken up in the consideration of the Clayton bill, when that is before the Senate.

Mr. THOMAS. Does the Senator think it wise to permit a corporation to invest in the stocks of any competing corporation?

Mr. WALSH. The Clayton bill, I will advise the Senator, contains a large number of exceptions. For instance——

Mr. THOMAS. I know it does. I was asking the Senator his view of that policy.

Mr. WALSH. I am not prepared to vote for a rule which absolutely prohibits one corporation from owning the stock of another corporation under any and all circumstances.

Mr. THOMAS. I can conceive of a mining company investing in the stock of a concern devoted to the manufacture of cyanide of potassium, for example, or of a local transportation company. I can also conceive of a manufacturing concern investing its money in some manufacturing concern with which it could have no trade relation or connection whatever. I do not believe that it is the function of a corporation, which is presumably a public institution or a quasi-public institution, to become so identified with any other corporation or any other corporate enterprise. One of the great evils of the day, the monopolistic evil, has its germ, in my judgment, its origin, in the removal of the old and salutary restriction which prevented one corporation from investing in the stock of another under any circumstances. I think the way to handle this evil is to go to the root of it and to restore, if possible, those conditions which existed before it arose.

Mr. WALSH. There is not the slightest doubt in the world that the origin of all these troubles springs from the power given to one corporation to hold stock in another corporation.

Mr. THOMAS. If the Senator will permit another interruption, just so long as we stop short of the condition which we abandoned, and the abandonment of which led to this evil, will our remedy, I am afraid, prove ineffectual.

Mr. WALSH. But I understand the Senator himself to say that he sees no evil in the holding of the stock of some corporations by other corporations.

Mr. THOMAS. Oh, no; I did not so state. I instanced those as illustrations of investments which might still be made if the suggested amendment of the Senator limiting this restriction to competing corporations were enacted into law, but I did not approve of them. My reason for referring to it was that there could be such an investment, which should not be permitted, because it will inevitably ultimate in reproducing the abuses at which this bill is aimed in some other shape.

Mr. WALSH. Mr. President, I rose simply to endeavor to avoid the discussion of those questions at this time, indicating my belief that they ought to be deferred until the Clayton bill is before us for consideration.

The PRESIDENT pro tempore. The question is on the adoption of the amendment offered by the Senator from Iowa to the amendment of the committee.

Mr. CUMMINS. On that I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. CHAMBERLAIN (when his name was called). Transferring my general pair with the junior Senator from Pennsylvania [Mr. OLIVER] to the Senator from Indiana [Mr. SHIVELY], I vote "nay."

Mr. CHILTON (when his name was called). I have a general pair with the Senator from New Mexico [Mr. FALL]. In his absence I withhold my vote.

Mr. HOLLIS (when his name was called). I transfer my pair with the junior Senator from Maine [Mr. BURLEIGH] to the junior Senator from Kentucky [Mr. CAMDEN] and vote "nay."

Mr. SMITH of Maryland (when his name was called). I transfer my pair with the Senator from Vermont [Mr. DILLINGHAM] to the Senator from Alabama [Mr. BANKHEAD] and vote "nay."

Mr. THOMAS (when his name was called). I have a general pair with the senior Senator from New York [Mr. ROOT]. In his absence I withhold my vote. If I were at liberty to vote, I would vote "yea."

Mr. TILLMAN (when his name was called). I transfer my general pair with the Senator from West Virginia [Mr. GOFF] to my colleague [Mr. SMITH of South Carolina] and vote "nay."

Mr. WILLIAMS (when his name was called). Announcing my pair with the Senator from Pennsylvania [Mr. PENROSE], I transfer it to the junior Senator from Virginia [Mr. SWANSON], and I vote "nay."

The roll call was concluded.

Mr. GALLINGER. I will inquire if the junior Senator from New York [Mr. O'GORMAN] has voted?

The PRESIDENT pro tempore. He has not.

Mr. GALLINGER. I am paired with that Senator, but I will transfer the pair to the Senator from California [Mr. WORKS] and vote "yea."

Mr. CLARK of Wyoming. I desire to announce the unavoidable absence of my colleague [Mr. WARREN]. He is paired with the Senator from Florida [Mr. FLETCHER].

Mr. SMITH of Georgia. I desire to transfer my pair with the Senator from Massachusetts [Mr. LODGE] to the junior Senator from Tennessee [Mr. SHIELDS] and vote "nay."

Mr. SIMMONS. I have a general pair with the junior Senator from Minnesota [Mr. CLAPP], but by agreement that pair is suspended as to all votes upon amendments to this bill and the bill itself. I will not make this announcement as to other votes upon the bill.

Mr. MYERS. I have a pair with the Senator from Connecticut [Mr. MCLEAN] who is necessarily absent from the city. I transfer that pair to the junior Senator from Nevada [Mr. PITTMAN] and vote "nay."

Mr. WEEKS. I have a general pair with the senior Senator from Kentucky [Mr. JAMES]. I transfer that pair to the Senator from Illinois [Mr. SHERMAN] and vote. I vote "nay."

Mr. THORNTON. I was requested to announce the unavoidable absence of the junior Senator from New York [Mr. O'GORMAN].

Mr. GRONNA (after having voted in the affirmative). May I inquire if the senior Senator from Maine [Mr. JOHNSON] has voted?

The PRESIDENT pro tempore. He has not.

Mr. GRONNA. I have a general pair with that Senator. I will transfer it to my colleague [Mr. MCCUMBER] and allow my vote to stand.

Mr. GALLINGER. I have been requested to announce the following pairs:

The Senator from Delaware [Mr. DU PONT] with the Senator from Texas [Mr. CULBERSON];

The Senator from West Virginia [Mr. GOFF] with the Senator from South Carolina [Mr. TILLMAN];

The Senator from Michigan [Mr. SMITH] with the Senator from Missouri [Mr. REED];

The Senator from Wisconsin [Mr. STEPHENSON] with the Senator from Oklahoma [Mr. GORE];

The Senator from South Dakota [Mr. STERLING] with the Senator from Mississippi [Mr. VARDAMAN]; and

The Senator from Michigan [Mr. TOWNSEND] with the Senator from Arkansas [Mr. ROBINSON].

Mr. WALSH (after having voted in the negative). I voted in the belief that the Senator from Rhode Island [Mr. LIPPITT] with whom I have a general pair had voted. I am informed that he has not voted. Accordingly I withdraw my vote.

Mr. KENYON. I desire to announce the unavoidable absence of the senior Senator from Wisconsin [Mr. LA FOLLETTE], on account of illness.

The result was announced—yeas 16, nays 38, as follows:

YEAS—16

Brady	Crawford	Jones	Norris
Burton	Cummins	Kenyon	Perkins
Catron	Gallinger	Lane	Smoot
Clark, Wyo.	Gronna	Nelson	Sutherland

NAYS—38.

Ashurst	Lea, Tenn.	Pomerene	Stone
Brandegee	Lee, Md.	Ransdell	Thompson
Bryan	Lewis	Reed	Thornton
Chamberlain	Martin, Va.	Saulsbury	Tillman
Clarke, Ark.	Martine, N. J.	Shafroth	Weeks
Colt	Myers	Sheppard	West
Hitchcock	Newlands	Simmons	White
Hollis	Overman	Smith, Ariz.	Williams
Hughes	Owen	Smith, Ga.	
Kern	Page	Smith, Md.	

NOT VOTING—42.

Bankhead	Fletcher	Oliver	Stephenson
Borah	Goff	Penrose	Sterling
Bristow	Gore	Pittman	Swanson
Burleigh	James	Poindexter	Thomas
Camden	Johnson	Robinson	Townsend
Chilton	La Follette	Root	Vardaman
Clapp	Lippitt	Sherman	Walsh
Culberson	Lodge	Shields	Warren
Dillingham	McCumber	Shively	Works
du Pont	McLean	Smith, Mich.	
Fall	O'Gorman	Smith, S. C.	

So Mr CUMMINS's amendment to the amendment was rejected.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by D. K. Hempstead, its enrolling clerk, announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the President pro tempore:

S. 1784. An act restoring to the public domain certain lands heretofore reserved for reservoir purposes at the headwaters of the Mississippi River and its tributaries; and

H. R. 12579. An act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1915.

COMMITTEE SERVICE.

Mr. WALSH was, on his own motion, relieved from further service upon the Committee on the Philippines.

Mr. CHILTON was, on his own motion, relieved from further service upon the Committee on Post Offices and Post Roads, the Committee on Expenditures in the Post Office Department, and the Committee on Expenditures in the Department of Commerce.

Mr. POMERENE was, on his own motion, relieved from further service upon the Committee on the Census.

Mr. MYERS was, on his own motion, relieved from further service upon the Committee on Civil Service and Retrenchment.

FEDERAL TRADE COMMISSION.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 15613) to create an interstate trade commission, to define its powers and duties, and for other purposes.

The PRESIDENT pro tempore. The question is upon the adoption of the committee amendment as amended.

Mr. JONES. That is, on the substitute, I understand, as amended thus far?

The PRESIDENT pro tempore. Yes, sir.

Mr. JONES. There has been no substitute offered for section 5. The Senator from Iowa——

Mr. POMERENE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Washington yield to the Senator from Ohio?

Mr. JONES. Certainly.

Mr. POMERENE. I was going to say that I expected to offer the amendment of which I gave notice a few minutes ago.

Mr. JONES. I understood there was to be an amendment offered, but the question was about to go to a vote, and the Senator from Iowa was absent. He ought to be here, and I was going to suggest the absence of a quorum simply to give him an opportunity to be present. I will not do that now if the Senator wants to offer an amendment.

Mr. POMERENE. I ask that the amendment which I sent to the desk a little while ago be now laid before the Senate.

Mr. OVERMAN. Has the amendment been printed?

Mr. POMERENE. It was sent to the Printing Office, and I think it will be here in a very little while.

The PRESIDENT pro tempore. The Senator from Ohio offers an amendment as a substitute for section 5, which will be read.

The SECRETARY. In lieu of section 5 it is proposed to insert:

SEC. 5. That unfair competition in commerce is hereby declared unlawful. The commission is hereby empowered and directed to prevent corporations from using unfair methods of competition in commerce.

Whenever the commission, either upon information furnished by its agents or employees, or upon complaint duly verified by affidavit of any interested person, has reason to believe that any corporation is violating any of the provisions of this section, it shall issue and cause to be served a notice accompanied with a written statement of the violation charged upon such corporation, which shall thereupon be called upon within a reasonable time fixed in such notice, not to exceed 30 days thereafter, to appear and show cause why an order should not issue to restrain and prohibit the violation charged, and upon a hearing held pursuant to such notice the commission shall make and file its findings of fact and conclusions of law, and if it shall appear that such corporation is guilty of the violation charged, then the commission shall issue and cause to be served on such corporation an order commanding it forthwith to cease and desist from such violation within the time and in the manner prescribed in such order. Any such order may be modified or set aside at any time by the commission issuing it for good cause shown.

If any corporation charged with obedience thereto fails or neglects to obey any such order, the said commission, by its attorneys, if any it has, or by the appropriate district attorney, acting under the direction of the Attorney General of the United States, may apply for an enforcement of such order to the district court of the United States for the district wherein such corporation has its domicile, or wherein any of the acts complained of were committed, or wherein it transacts any business, and therewith transmit to the said court the original record in the proceedings, including all the testimony taken therein and the report and the order of the commission duly attested by it. Upon the filing of the record, the court shall have jurisdiction of the proceeding and of the questions determined therein and shall have power to make and to enter upon the pleadings, testimony, and proceedings such orders and decrees as may be just and equitable. On motion of the commission, and on such notice as the court shall deem reasonable, the court shall set down the cause for summary final hearing. Upon such final hearing the findings of the commission shall be prima facie evidence of the facts therein stated, but if either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is competent and material, and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may allow such additional evidence to be taken before the commission or before a master appointed by the court, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem just. Disobedience to any order or decree which may be made in any such proceeding, or any injunction or other process issued therein, shall be punished by a fine not exceeding $100 a day during the continuance of such disobedience or by imprisonment not exceeding one year, or by both such fine and imprisonment.

Any party to any proceedings brought under the provisions of this section, including the person upon whose complaint such proceedings shall have been begun, if begun on such complaint, as well as the United States, by and through the Attorney General thereof, may obtain a review of any final order made by such commission in any district court having jurisdiction to enforce any order which might have been made in the proceeding by such commission as hereinbefore provided, by serving notice upon the adverse party, if there be one, and filing the same with the said commission at any time within 30 days from the date of the entry of the order to be reviewed, and thereupon the same proceedings shall be had as are prescribed herein in the case of an application for the enforcement of an order made by the commission.

The pendency of such application for review shall not of itself stay or suspend the operation of the order of the commission, but the district court in its discretion may stay or suspend, in whole or in part, the operation of the order of the commission pending the final hearing and determination by the court. No order or injunction so staying or suspending any such order shall be made by the district court except upon notice and after hearing, save that in cases where irreparable damage would otherwise ensue to the applicant, said court may, on hearing, after not less than three days' notice to the commission and the adverse party, if there be such, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the commission for not more than 60 days from the date of the order of such court, in which case the said order shall contain a specific finding that such irreparable damage would result to the applicant. The court may, upon like application and showing, continue the temporary stay or suspension, in whole or in part, to such further period as it may deem proper.

Any final order or decree made by any district court, in any proceeding brought under this section, may be reviewed upon appeal, as in cases in equity, by the circuit court of appeals having jurisdiction to review the judgments and decrees of the district court making such order, provided that such appeal shall be taken within 60 days from the entry of such order or decree, and the judgment of the circuit court of appeals shall be final except that the same shall be subject to review upon certiorari or certificate, as provided in sections 239 and 240 of the judicial code.

The commission may provide for the publication of its reports under this section in such form and manner as may be best fitted for public information and use.

No order or finding of the court or commission in the enforcement of this section shall be admissible as evidence in any suit, civil or criminal, brought under the antitrust acts.

The PRESIDENT pro tempore. The question is on the adoption of the amendment offered by the Senator from Ohio [Mr. POMERENE].

Mr. SUTHERLAND. May I ask for the rereading of the latter part of the amendment?

The PRESIDENT pro tempore. It will be read.

The Secretary read as follows:

Any final order or decree made by any district court, in any proceeding brought under this section, may be reviewed upon appeal, as in cases in equity, by the circuit court of appeals having jurisdiction to review the judgments and decrees of the district court making such order, provided that such appeal shall be taken within 60 days from the entry of such order or decree, and the judgment of the circuit court of appeals shall be final except that the same shall be subject to review upon certiorari or certificate, as provided in sections 239 and 240 of the judicial code.

The commission may provide for the publication of its reports under this section in such form and manner as may be best fitted for public information and use.

No order or finding of the court or commission in the enforcement of this section shall be admissible as evidence in any suit, civil or criminal, brought under the antitrust acts.

Mr. SUTHERLAND. I should like to ask the Senator from Ohio whether he means by that last clause, that the findings shall not be admissible in evidence, to announce the same rule that is contained in the amendment which we have already adopted on that subject.

Mr. POMERENE. The amendment as adopted was added to the amendment after it was prepared by those having it in charge.

Mr. SUTHERLAND. I am very sorry that the Senator from Ohio has included that provision in his amendment. I should like to have voted for this amendment, but I can not vote for it with that provision in it, because I regard it as bad legislation, for the reasons that I have already expressed with reference to the amendment which we already adopted.

Mr. WEST. Are not the words included in another amendment that has already been adopted?

Mr. SUTHERLAND. Exactly; the amendment has been adopted, and I hoped the Senator from Ohio might see his way clear to eliminate those words from this amendment, which are really not necessary. It is really a repetition of what the Senate has already adopted.

With that exception, Mr. President, I would vote for this amendment, not because I think it removes all the objectionable features that are to be now found in section 5 of the bill, but because I think it vastly improves it; and as between the two propositions, I prefer the amendment proposed by the Senator from Ohio, although I do not mean to say by that that if perfected I would vote for it as a proposition by itself.

Mr. POMERENE. Mr. President, I am very glad to hear the Senator from Utah [Mr. SUTHERLAND] express his approval of the principle of the amendment. The objectionable paragraph has already been adopted by the Senate, and at this moment stands with the approval of the Senate. Of course it was not necessary that we should attach to this amendment the part to which the Senator objects.

I desire to say briefly, in explanation of the amendment, that after the pending bill was reported to the Senate by the Interstate Commerce Committee several amendments to section 5 as therein contained were offered. Among these was one by the junior Senator from New Hampshire [Mr. HOLLIS], another by the junior Senator from Delaware [Mr. SAULSBURY], and another by the junior Senator from South Dakota [Mr. STERLING]. I myself offered an amendment to the bill embracing many of the features contained in the pending amendment. The Judiciary Committee had this subject matter before it for consideration, and it drafted a similar section, with special reference to the provisions contained in the Clayton bill on the subject of interlocking directorates and stockholding companies. I think the amendment as presented contains, perhaps, the best features of all of those amendments. I say "best" from the standpoint of those who favor legislation of this character.

Mr. WEEKS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Massachusetts?

Mr. POMERENE. I do.

Mr. WEEKS. I am familiar with the amendments to which the Senator from Ohio has referred, and I should like particularly if during his comments he will explain the difference between the amendment which he previously offered and the one which is now pending. It is difficult to follow the various phases of a long amendment being read from the Secretary's desk; at least it is so for a layman, and I should like to have some explanation of the difference.

Mr. POMERENE. Mr. President, perhaps I ought to say that in the main the principles contained in the first amendment I offered and in the amendment just now proposed and in the Clayton bill are in substance the same. The differences are rather in detail. The pending amendment provides that, either upon information gathered by the commission through its agents and representatives or upon the complaint of some one else, duly certified, setting forth the fact that a corporation has been guilty of unfair methods of competition, a notice shall be served upon such corporation, with a copy of the written complaint, requiring it to show cause within 30 days why an order should not be made compelling it to desist from further unfair methods of competition.

Provisions are made for the taking of testimony and for the summary hearing of the case. If the commission shall find that the complaint has been sustained, then it is the duty of the commission to issue an order against the accused corporation. If such corporation should fail to comply with the order, then the commission has the right to make application to the United States district court to enforce the order, filing with the application the record in the case below, including the testimony, the complaint, and the order which the commission made.

A hearing is provided for, and this order shall be prima facie in its effect. Additional testimony may be taken by any party concerned only when it is made to appear that the testimony was not known to the party offering to produce it at the time of the hearing below, or, if it was known, that it could not, by the exercise of reasonable diligence, be procured.

There is also a provision whereby the accused corporation, if it feels aggrieved, can file its application in a similar way in the district court for a review of the findings of the commission.

The party that files the complaint and the United States, by its Attorney General, also have the right to ask for a review. Provision is made in case of disobedience of the order of the commission for enforcing it by contempt proceedings.

After the analogy of the interstate-commerce law, it is likewise provided that the mere filing of the application in the district court shall not operate to suspend or annul the order which was theretofore made by the commission, but the court shall have the right, upon the motion of the aggrieved party and upon proper showing, to grant a suspension, in whole or in part, of the order of the commission for a period of 60 days, pending the final determination of the case. This order of suspension can, upon like showing, be continued for a further period, if the court in its wisdom deems proper.

There is also a provision to the effect that an appeal may be taken from the decree of the district court to the circuit court of appeals, and such decree shall be final, except that it may be reviewed, either on certiorari or upon a certificate, after the manner of obtaining reviews by the Supreme Court of the proceedings of the United States Circuit Court of Appeals as set forth in the circuit court of appeals act.

Mr. President, the differences to which I have referred as between the original amendment offered by myself and the pending amendment lie in these respects: First, my original amendment referred to the proceedings as the filing of a bill in equity. That language has been modified. The Clayton bill referred to the proceeding as an appeal from the commission to the United States court. The pending amendment refers to it simply as filing an application for review.

In the first amendment proposed by myself I did not attempt to state the effect that the order of the commission would have in the United States district court. I assumed, of course, that the burden of proof would be on the party having the affirmative of the issue. In the Clayton bill it was provided that the findings of fact before the commission should be prima facie proof in the court above, and that is the provision of the pending amendment.

In the Clayton bill there was no provision as to the effect which the so-called appeal to the district court would have upon the order of the commission. In the amendment which I have presented this afternoon, as well as in an amendment presented by me a few days ago, there is a provision that the appeal shall not stay the proceeding without the filing of a motion by the aggrieved party and a hearing thereon.

The Clayton bill and the pending amendment differ very radically from the provision of the bill as reported to the Senate by the committee, in that the committee bill did not have any provision for a review or an appeal by the accused corporation. In the committee bill there is no provision even for the filing of a complaint. The commission, if it had information to the effect that there was unfair competition, which seemed to justify its intervention, could simply serve a notice on the corporation to come before it within a period of 30 days and show cause why an order should not be issued against it to desist from the alleged unfair competition; but there was no provision in the committee bill requiring the commission to give any detailed information to the accused corporation which would advise it of the offense charged or give it an opportunity to meet its accuser in a reasonably fair way.

Under the committee bill, if the decision should be in favor of the accused corporation, there was no provision for any record whatever. The corporation would have been put to the expense of a trial without the benefit of any record in its behalf

in the event that it was found to have complied with the law. On the other hand, if the finding of the commission should be against the corporation then the corporation was put in this unfortunate predicament: It was either compelled to comply with the order of the commission, though it might have felt it was aggrieved thereby, or it would be compelled to openly defy the order of the commission and await a proceeding by the commission in the United States district court in order to compel it to comply. I think most of the Senators who have investigated this subject felt that it would be doing a very great injustice to an accused corporation not to provide that it should have its day in court.

I think that, briefly stated, those are the principles contained in each of the bills and amendments which have been presented to the Senate on this subject; and I believe that, upon careful consideration, it will be found that the pending amendment contains the best parts of each of the several amendments to which I have referred.

Mr. REED. Mr. President, I wish to ask, before the Senator takes his seat——

The PRESIDING OFFICER (Mr. CHILTON in the chair). Does the Senator from Ohio yield to the Senator from Missouri?

Mr. POMERENE. I do.

Mr. REED. Has this amendment made any change in the definition of "unfair competition" as that phrase was contained in the section to which this is offered as an amendment?

Mr. POMERENE. It has not. The provision in that behalf is just the same as it was in the original provision.

Mr. REED. I listened to the Senator's remarks the other day, in which I understood him to take the position that the provision "unfair competition in commerce as hereby declared to be unlawful" would be restricted in its meaning to the meaning which has been given to that term by the courts. I understood him to hold at that time that there was a fatal defect in the bill because it did not give a definition for that phrase. I find it now copied in the same manner in the amendment which the Senator offers, and I am anxious to know whether the Senator has changed his mind with reference to the construction of that phrase.

Mr. POMERENE. Mr. President, I have not changed my mind as to the construction which I then placed upon the language of this bill. Without attempting to go into a rehearsal of my argument of the other day, I may state briefly that my position then was that the phrase "unfair competition" as contained in this bill would be restricted by the courts to such practices as were regarded as unfair competition under the common law; and, believing that it should have and would have that restricted meaning, I stated that I felt that it could be constitutionally defended.

I stated further that if it were to have the broader signification which is attached to those words by other Members of the Senate, then I should doubt its constitutionality, because, under the broader construction, in my judgment, it would be a delegation both of legislative and judicial power.

I do not think, however, in view of the fact that it can be defended with the restricted limitation which I believe the court will place upon the words "unfair competition" we ought to hesitate, because the court might give them the broader construction.

I recognize the fact that when it comes to the question of constitutional law and the courts are seeking to determine whether the statute is constitutional or not, if it is susceptible of two constructions, one of which would make it constitutional and the other make it unconstitutional, then the court would adopt the former construction.

Mr. WALSH and Mr. REED addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Ohio yield; and, if so, to whom?

Mr. WALSH. I merely want to say a word in view of what has been stated by the Senator from Ohio.

Mr. POMERENE. I will yield to the Senator from Montana in a moment. If the Senator will pardon me further, I desire to say that I understand a number of Senators on the committee have views differing from mine on this subject. I was simply voicing my own views the other day, as I am now, in that behalf.

Mr. WALSH. Mr. President, it was in reference to that feature of the matter that I desired to say a word, because the authorship of the amendment was attributed by the distinguished Senator from Ohio [Mr. POMERENE] partly to myself in some remarks he made sometime ago. Speaking for myself, I do not at all agree that the phrase "unfair competition" will receive or can receive so restricted a construction by the courts, and I do not believe that it will be construed as that phrase was understood at common law, if under the common law it was restricted in its meaning to include only the substitution of the goods of one man for the goods of another. I believe that when construed by the court it will be given the meaning which it has to-day in common parlance and the accepted significance that it has in the literature of this, our day.

Mr. POMERENE. Mr. President, I desire to say, in answer to the Senator, that I had known what his view was on that subject well, and I do not believe under the common-law construction that the phrase would be given even the narrow and limited meaning which the Senator would attach to it by his expressed words.

Mr. REED. Mr. President, I understood the argument of the Senator from Ohio the other day upon this particular question to be in substantial agreement with the position I have taken, with the possible exception that perhaps the Senator from Ohio held the view that the term "unfair competition" had by some courts or court been extended slightly beyond the mere matter of the substitution of the goods of one man for the goods of another, but I thought he held to the view that it had an exceedingly narrow and limited meaning and that the courts in construing the term would look to the definitions which had been given to that term by the courts.

I therefore can not withhold an expression of surprise that he will bring in an amendment using identically the same language, because if the words have the exceedingly restricted meaning that I contend they have, or if they have the limited meaning the Senator from Ohio holds they have, if I understand him correctly, then we would accomplish but little by all this legislation, because we would not reach into that field which all concede ought to be carefully embraced in any law that is to be passed. I can not understand the position of the Senator from Ohio now. I say that, of course, in all kindness.

Mr. POMERENE. Mr. President, I am very sorry that the Senator does not understand me. I think I understand my own position in this matter, and I recognize the fact that the construction I would place upon these words is a narrow construction compared with the field which it is hoped to cover by other members of the committee; but, on the other hand, if we will examine the authorities, whether they be text writers or adjudications upon the subject of what is unfair competition, we will find that that expression has a pretty broad scope, and it is because I believe that fact that I am willing to subscribe to this amendment as it is. I think that it is a step in the right direction, and I hope to see it passed by this Congress. I think that, with our future experience under it, we will get much more light, and I hope that in the near future the discussion of this subject will enable some one to define with exactness the words "unfair competition." I can not do so, and I have not seen anyone yet who has been able to define those words; at least to my satisfaction.

Mr. REED. Mr. President, in view of the statement made by the Senator from Ohio, I wish he would tell the Senate—he has served on the Committee on Interstate Commerce and is a very fine lawyer—what he thinks is embraced within this term; what practices outside of the substitution of the goods of one man for the goods of another, and, if he can, I hope he will tell me where I can find the rule settled in the books.

Mr. POMERENE. Mr. President, the Senator might just as well ask me to define what cases were embraced in the word "fraud." No court has been able to define it. No legislative body has been able to define it. We have got to depend very largely upon the light we have gotten from the adjudications upon the subject; and the same rule must apply when it comes to what is to be embraced in the phrase "unfair competition."

Mr. REED. But, Mr. President, if I were to ask the Senator to state what acts or classes of acts are embraced within the term "fraud," the Senator would have not the slightest hesitation in naming a great number. He could give numerous illustrations. For instance, he could say that if an attorney employed to represent a client were to deal with the client's property it would be fraudulent, unless he dealt with the client's full acquiesence and knowledge. He could say that if a man put his property out of his hands for the purpose of defeating his creditors, that was an act of fraud; and I need not multiply instances. Indeed, I could stand here, I suppose, until night and think of instances of fraud that have been condemned by the books.

One specific instance to which the term applies has been repeatedly cited. I read here the definition of "unfair competition" from three of the law dictionaries, and they all agreed that it covered simply the substitution of one man's goods for those of another. The Senator says he thinks it is broader than that, and yet he gives us no bound, no limit, no indication of how far it will go.

If that is his view I am a little surprised that he brings in a bill with that kind of language repeated in it. I understood he was opposed to section 5 because of the very vagueness and indefiniteness of that language. I may have misunderstood him.

The importance of section 5, in my judgment, does not rest in the details as to how it is to be enforced. The importance of section 5 rests in the question as to the scope of the authority and the jurisdiction we are about to confer. Indeed, the other matters are matters of detail; and I had hoped, when this committee of learned gentlemen, whether it is a voluntary committee or a regular committee, got together last night that they were going to bring us in either a specification of the acts and practices that are to be prohibited, or at least a general definition which would enable the business man and the lawyer and the citizen generally to know what authority the commission had and what his rights were. Instead of that we have the same old vague language, and three of the men who worked upon this bill last night have three different ideas about it now.

It seems to me that there is not such a dearth of talent that we can not at least write down what we intend to cover. I am disappointed. I hope this matter will lie over until to-morrow and be printed, and that the Senate will have a chance to examine it.

Mr. POMERENE. Mr. President, if the Senator from Missouri is able to define the phrase "unfair competition," there will never hereafter be any task which he can not perform. I do not think it is possible to define those words in the present state of the law so as to embrace everything which anyone might feel ought to be included within the prohibition of this bill; but the mere fact that some of my colleagues and myself agree that certain things are embraced within its terms, and we differ upon the question whether certain other things are embraced within its terms, is no reason why we should not try to legislate upon the subject and thereby put a stop to those things about which we do agree.

I understand, from the views that I entertain upon this subject, that there are many, many branches of deception and fraud which are covered by the term "unfair competition." We can say generally that it refers to that class of acts whereby one dealer seeks to make the public believe that his goods are the goods of another. There are hundreds of different kinds of practices which may be embraced within that classification. It goes to questions of espionage upon the business of another. It touches upon the question of trade-marks. That is only a very small part of the kind of acts which are now known as "unfair competition."

I regret that I am not able to define the words more explicitly, and I should be glad to have some one else do it; and I know of no one who could venture upon that field with greater prospects of success than my very learned friend from Missouri.

Mr. REED Mr. President, every time there is an objection raised to the language the answer is, "Well, it is true we do not know what it means; we do not know what we mean ourselves; but we are going to do it, and if you do not like it you write a law that is all right." That is the spirit.

Mr. President, as long as I live I do not intend to vote to vest in a board of men the power to do something of great moment and great sweep and great gravity when I do not myself, at least, entertain a clear idea as to the powers I have granted.

Is it possible that Senators charged with writing a law are willing to write a law about which they confess in advance they have not the slightest conception as to its scope or meaning, and that they will do that simply because they find difficulty in expressing a rule? Is it possible that we are willing to confer upon any board of men, whether they be lawyers or commissioners or judges of courts, a power which we can neither understand nor bound nor describe? Are we willing to confer that kind of power on human beings? Is there any man here who has ever practiced before a court, who has ever seen the inside of law books, who is willing to subscribe his name to a bill when he says in advance that he has no idea as to what is covered by that bill?

It seems to me that is an utterly indefensible position. I can understand the Senator from Nevada, and I can understand his position. It is logical, whether it be sound or not; it is coherent, and each part of it can be reconciled with each other part of it, if you can divide up an opinion. You certainly can divide a theory. The Senator from Nevada holds to the doctrine, broadly, that we have the right to confer upon these three men the absolute power, in their discretion and guided by their judgment, to say to all of the business men of the United States what they can do and what they can not do. He has a definite idea. He is willing to confer that vast and limitless power upon five men. But my friend from Ohio astounds me when he says that he does not believe we are vesting these powers within the discretion of a commission, but that he thinks we are conferring some power, and he has no idea how far that power goes, or what it embraces, or to what extent it may be exercised.

I heard the Senator's speech, and I heard him say:

> One of the most unsatisfactory features of this bill is that which declares unfair competition to be unlawful, without any attempt to define what unfair competition is; and I have seen no bill thus far which eliminates that objection. I was led to believe, and I believe now, that if it were to become the law of the land the courts would hold that the words "unfair competition" mean only such practices as are held to be unfair competition under the common law. I can not believe that the term "unfair competition" could be used in its colloquial or popular sense, if it has a colloquial or popular sense, which I do not believe.

And so on throughout this very interesting address the other day the Senator from Ohio held to the limited construction. If it is limited to the definitions laid down in the common law, if that is what this term means, then, of course, we know what we are legislating about; but that meaning is so limited that it will work no benefit to write it in this bill.

The Senator intimates, without exactly saying, that he thinks the language will go further than that, but he does not know how far it will go. He does not know where it will lead us. It seems to me that it is a case of the blind leading the blind. It seems to me that we are wholly unjustified in taking a position of that kind.

Mr. President, I have talked upon this bill until I have no right to take the time of the Senate further. The Senate is not considering this bill, Mr. President. The Senate is largely absent. The Senate has been largely absent, or the Senators; and when the discussion is on Senators largely remain away from the Chamber.

I attended a meeting the other night when there were a great many gentlemen present who said they were going to be in this Chamber and attend to their duties.

Mr. THOMAS. All of them.

Mr. REED. And yet this discussion has gone on, and there have been many very able addresses made to empty benches. We are about to vote upon a proposition that affects the welfare of every man, woman, and child in the United States, affects all our business policies, reaches out into a new field that is radically different from those we have occupied, and I regret to say the Senators are not analyzing and considering this legislation.

I appeal to my friends on this side of the Chamber whether we can afford to make a great mistake. I appeal to every man who understands—and we all do understand—the fundamentals of our Government whether we are prepared to grant an unlimited and unbounded power to a board of men; whether we are willing to enact a law when the four or five or six authors of that law all entertain different views as to what it means, and those opinions, not as to mere shadow ground, not as to doubtful questions, are as far apart as the North Pole and the Southern Cross.

Of course there is a shadow ground about every law. We reach a point where complicated facts may fall upon the right side of the line or upon the left. You can not draw a law as to which that condition will not arise, but you can draw laws that are plain as to their rules, and then the only question of doubt arises from applying that plain rule to a complicated condition of facts.

Mr. WEEKS. Mr. President, a few moments ago I directed an inquiry to the Senator from Ohio, asking him to explain the provision which is now under consideration and how it differed from an amendment which he had heretofore offered. While he was making the explanation—and I think it was clear and concise—I tried to place myself in the position of a client and to place him in the position of my attorney telling me what I could do under this law. The longer I heard his explanation the more convinced I became that its title should be—

> A bill to boom the legal profession and to increase the emoluments of the members thereof.

The Senator from Ohio has assured us that he does not know just exactly what this is going to mean or what the results will be. I am inclined to vote for the amendment which he has offered. I want to read it over once or twice before doing so, to try to come to a conclusion as to what it means, but I am inclined to vote for it, for it seems to me that it is an improvement on section 5 of the bill. In fact, I think anything would be an improvement on that section. I am willing to take the assurance of the Senator from Ohio, who is a good lawyer, that possibly it will remove the constitutional objection which rests against the bill.

Now, we talk about the "new freedom" or some kind of freedom which is going to surround the business men of this country who are surrounded by a maze now. That condition

will be increased by this legislation. Somebody has prepared a letter which, I think, was first published in the New York Sun—I found it in the Boston Traveler of yesterday—which illustrates about the condition that the business man will be in when this legislation is adopted. I will read it to the Senate. It is from one corporation to another—directed to the Smith Manufacturing Co.—of course a hypothetical company—of Rochester, N. Y.:

SMITH MANUFACTURING CO., *Rochester, N. Y.*

GENTLEMEN: Referring to your letter (see Postal Regulation, p. 126, pp. 44) of the 28th, we (a corporation organized under the laws of Ohio certificate filed in the office of the secretary of New York State, N. Y.) beg to advise you that we can quote the price of $20 (see U. S. R. S., laws of 1914, sec. 18) per ton, carload lots (see Interstate Commerce ruling 256; see also dicta in 128 U. S., 264; Brown *v.* Pennsylvania R. R. Co., 168 Pa., 267). This quotation is special to you (see ruling of Department of Justice in the matter of Brown Milling Co.), and is made subject to our right to claim immunity (see N. Y. Penal Code, p. 48). If you receive a better quotation from any other of our competitors, you will, of course, advise us under the authority of United States Revised Statutes, page 2247, subdivision 2. We shall be glad to fill your order (subject to rule laid down in leading case of Jackson *v.* Cobb, 126 U. S., 232), and will ship according to your instruction (see Rule 37, N. Y. Publicity Commission).

Very truly, yours,

J. P. JONES,
President Jones Manufacturing Co.

[Laughter.]

STATE OF OHIO, *County of Fairfield, ss:*

J. P. Jones, being duly sworn, deposes and says that he has submitted the foregoing letter to his counsel, and has been advised that it is legal; that deponent is not a director of any bank, trust company, or transportation company; that the Jones Manufacturing Co. has never had its charter forfeited, nor has deponent ever been indicted by either State or Federal grand jury.

P. P. WHITE, *Notary Public.*

[Laughter.]

Mr. SUTHERLAND. Mr. President, I judge from the article which the Senator from Massachusetts has read that the supposititious gentleman who wrote the letter must have thought this proposed statute, with reference to "unfair competition," was pretty nearly as elastic as the Senator from Nevada regards it. I think he must have had in mind the rules of construction laid down in a note on the construction of exemption statutes to a case found in Forty-fifth American Decisions, and which rules I think the Senator from Nevada must also have had in mind, because he has given a meaning quite as liberal and elastic to this term "unfair competition," according to the statements which he has from time to time made.

I think I will trespass on the patience of the Senate long enough to read it:

The rule that statutes in derogation of the common law shall be strictly construed, has no application to homestead exemption laws. The right to sell the real property of the debtor for payment of his debts was not a common-law right, but is purely statutory, and hence the rule can have no application, and such statutes will be liberally construed.

This reason for the nonapplication of the rule does not apply to statutes exempting personal property. It was at common law subject to execution and undoubtedly its exemption is in derogation of it.

Then the note goes on further and says:

They are humane in their nature and are generally liberally construed.

Thus, under the broad and liberal construction of these laws, terms supposed to be very definite in their meaning, have become exceedingly elastic.

As I think this term is definite in the strict meaning of the law.

In the sheltering ægis of statutory construction it has been found that a statute exempting a "team" will also exempt a two-horse wagon, probably because the team draws the wagon after it, or, in the language of the laws of conveyances, the wagon is attached to and runs with the team. (Dains *v.* Prosser, 32 Barb., 290.) Under the magical shadow of a statute construed in the case of humanity, a heifer not 2 years old and wholly unknown to her masculine affinity, the bull, has been transformed into a cow. (Freeman *v.* Carpenter, 10 Vt., 433; S. C., 33 Am. Dec., 210. Carruth *v.* Grassie, 11 Gray, 211.)

[Laughter.]

Two calves 9 months old, having but lately undergone the process of weaning, have suddenly been promoted to the dignity, have been clothed with the toga virilis, as it were, of "a yoke of oxen or steers."

[Laughter.]

The bucolic judge learnedly remarks: "They are calf-steers or steer-calves. * * * These steers were not heifers, they were not bulls, and therefore must be steers" (Peck, J., Mundell *v.* Hammond, 40 Vt., 641); and they were held exempt.

[Laughter.]

Under the term "a yoke of oxen," a wild and untamed steer, 20 months old, whose neck ne'er knew the yoke nor back the lash, has taken shelter and been protected from execution. (Mallory *v.* Berry, 16 Kan., 293.) And as if the statute were an Aladdin's lamp to effect a transformation, or judges jugglers to mix up words and meanings, a cart was held to include a four-wheeled wagon. (Favers *v.* Glass, 22 Ala., 624.) A yoke of oxen included a single ox. (Wolfenbarger *v.* Standifer, 3 Sneed, 659.) A mule is a horse in Texas. (Allison *v.* Brookshire, 38 Tex., 199.) But Tennessee goes Texas one better. There a jackass is cosmopolitan in his nature, and may be either "horse, mule, or a yoke of oxen."

[Laughter.]

An explanation might be found for a jackass being a horse in the mathematical axiom that things which are equal to the same thing are equal to each other, and each is a half brother to the mule; and so one might be found for a jackass being a mule under the statute which considers half blood the same as whole blood; but why a jackass is an ox or a yoke of oxen must forever remain shrouded in deep and inscrutable mystery. (Richardson *v.* Duncan, 2 Heisk., 220.)

[Laughter.]

Mr. HOLLIS. Mr. President, the amendment offered by the Senator from Ohio is intended to define more precisely than the committee bill does the jurisdiction of the court over the orders of the proposed Federal trade commission. The bill as reported by the committee is indefinite in that respect.

The three views that are offered for the consideration of the Senate are these. The first bestows upon the commission the greatest possible power to determine what is a method of unfair competition and leaves to the court as little appellate jurisdiction or revisory power as possible. That method might be compared to the average case at law which is sent to the appellate court by writ of error to determine whether there is sufficient evidence to warrant the verdict or the finding of the court below. That is the extreme view in that direction.

The extreme in the other direction is the one which proposes to give to the finding of the commission nothing more than a complaint, where the record is to be transferred to the appellate court, and that court is to try the case de novo on such evidence as may be offered at that time by one side or the other.

The third method, and the one which has been adopted by the Judiciary Committee and is found in the Clayton bill as reported to the Senate, gives to the findings of the commission a prima facie weight, and the court is then to take the record from the commission and accept the findings at their prima facie value, but may admit other evidence, newly discovered, if it seems to the court to be just.

The Judiciary Committee has struggled with this problem and has reported a very fair and definite method of review of the findings by the Federal trade commission. The amendment proposed by the Senator from Ohio, as I understand it, differs from the mode adopted by the Judiciary Committee in only two or three minor particulars. One is the review from the decision of the court. The Judiciary Committee allows an appeal, I believe, directly from the United States district court to the Supreme Court of the United States. The amendment offered by the Senator from Ohio provides that the review of the district court's decision shall be by the circuit court of appeals, with the usual resort to certiorari, or by certificate from the circuit court of appeals to the Supreme Court of the United States. The amendment proposed by the Senator from Ohio follows the order of the Judiciary Committee's amendment. It adopts the phraseology and is very nearly the same.

I shall vote for the amendment offered by the Senator from Ohio with pleasure, and I hope that it will be adopted, because in one or two particulars it seems to me to be an improvement upon the Judiciary Committee's method.

But I wish to give notice to the Senate that if the amendment proposed by the Senator from Ohio be not adopted, I shall offer an amendment which is modeled exactly upon the proposed method of review that has been reported by the Judiciary Committee, so far as it applies to the case in hand, and ask that that be adopted. That amendment I offered this morning, and it has now been printed and is available.

I ought to say that I did omit from the Judiciary Committee's amendment one paragraph, but I have no objection to having that reinserted, which provides a penalty for disobedience. In the Clayton bill the disobedience which was intended to be punished was of a much more inclusive character than the disobedience under the trade-commission bill, and the penalty of $100 a day, while it is all right in the Clayton bill, where it will remain, would be rather drastic in the trade-commission bill. I think that is the only particular in which I have varied.

While I am on my feet, Mr. President, I desire to have put in the RECORD, where it may be available for the Senate, the entire decree by Judge Kenesaw M. Landis in the case of the United States of America, petitioner, against The Central West Publishing Co. and others. This decree has been already referred to in the Senate, but it may be well for me to call attention directly to five different kinds of methods of unfair competition that were thought by Judge Landis to come under the term "unfair competition." I will read from the second paragraph of that decree:

2. That the defendants herein and each of them have both separately and in concert committed acts in unfair competition against mutual competitors, and that these defendants and each of them as to

said matters be permanently and specifically enjoined and restrained from either directly or indirectly, separately or in concert, through their agents or employees, from in any manner committing or doing any acts of unfair competition against the competitors of either of these defendants, and that specifically each be permanently enjoined from thus doing or aiding in doing any of the following acts.

I ask the Senate to note that that is exactly the form that is followed by any court in equity when it enjoins a trespass. It first enjoins the committing of trespass upon the property of the complainant in general terms, and then goes ahead and specifically indicates the particular forms of trespass that the defendant is commanded not to do; for instance, breaking down a fence, treading down the grass, cutting a tree, picking berries, or what not.

Judge Landis after laying down the general injunction that the defendants must refrain from committing any acts of unfair competition and leaving it to the defendants at their peril to know what are those unfair acts of competition, as a rule of guidance to make it more specific and to give them less chance to come into court and make excuses if they are cited for contempt, lays down these particular acts:

(1) From underselling any competing service with the intent or purpose of injuring or destroying a competitor of either of these defendants.

(2) From sending out traveling men for the purpose or with instructions to influence the customers of such competitors of either of these defendants, so as to secure the trade of such customers, without regard to the price.

(3) From in any manner or for any length of time selling his or its service in either plate, ready print, or matrices, either separately or one service with another, at less than a fair and reasonable price, with the purpose or intent of injuring or destroying the business of any competitor of either of these defendants.

(4) From threatening any customer of a competitor with starting a competing plant unless he patronizes one or the other of these defendants.

(5) From threatening the competitors of either of these defendants that they must either cease competing with defendants or sell out to one or the other of the defendants herein, and from threatening that unless they do their industries will be destroyed by the establishment of near-by plants to actively compete with them or by any other method of unfair competition.

That is, Judge Landis, one judge on the Federal bench, and a judge of great ability and great experience, first enjoins the defendants from committing any acts of unfair competition. He then defines five specific classes of unfair competition and winds up by saying, "or by any other method of unfair competition."

Quoting, now, from the fifth paragraph:

5. That each of the defendants named in this petition be specifically and permanently enjoined and restrained from combining or joining in any acts—

(a) Of unfair competition either against another or against any mutual competitor;

(b) Looking toward a combination between any of these defendants;

(c) Any acts done with the intent or purpose of driving out of the industries in which they are now engaged of either of these defendants, or of any of their competitors.

The Senate should note that Judge Landis in this formal and solemn decree put each of the defendants at his peril to know what was unfair competition.

This decree merely indicates a part of the things that a man who is fit to sit upon the bench may decide to come within the general term "unfair competition."

Before I sit down I ask leave to have printed in the RECORD as a part of my remarks an editorial from the World-Herald of Omaha, Nebr. This editorial was offered by me about a week ago and was objected to by the Senator from Michigan [Mr. SMITH], probably because he thought it might be offensive in some way to the Senator from Nebraska [Mr. HITCHCOCK]. I have shown it to the Senator from Nebraska, and I offer it now without reading, with his approval and knowledge.

The PRESIDENT pro tempore. Unless there is objection the decree of Judge Landis and the editorial will be printed in the RECORD. The Chair hears none, and it is so ordered.

The matter referred to is as follows:

In the District Court of the United States for the Northern District of Illinois.

United States of America, petitioner, *v.* Central-West Publishing Co., Western Newspaper Union, American Press Association, et al., defendants. No. 30888. Decree.

This cause, coming on for hearing on this 3d day of August, A. D. 1912, before the Hon. K. M. Landis, district judge of this court, and the petitioner having appeared by its district attorney, James H. Wilkerson, and by William T. Chantland, special assistant to the Attorney General, and having moved the court for an injunction in accordance with the prayer of its petition, and it appearing to the court that the allegations of the petition state a cause of action against the defendants under the provisions of the act of July 2, 1890, known as the antitrust act, and that the court has jurisdiction of the persons and the subject matter, and that the defendants have each been regularly served with proper process and have filed their answers to the petition, and that the defendants, Central-West Publishing Co., Western Newspaper Union, Western Newspaper Union of New York, George A. Joslyn, John F. Cramer, H. H. Fish, and M. H. McMillen, by their attorneys, J. H. Cowin, John J. Sullivan, and Charles F Harding, and the defendants, American Press Association, Courtland Smith, W. G. Brogan, and Maurice F. Germond, by their attorney, Charles A. Brodek, have given and do now give in open court their consent to the rendition and entering of the following decree:

Now, therefore, it is ordered, adjudged, and decreed:

I. That the defendants, and each of them, are found and they are hereby declared to have been and to be now engaged in an attempt to monopolize interstate trade and commerce in the business of shipping ready-print papers, matrices, and stereotyped plates, and in the dissemination of news among the several States of the Union, all done and carried on in violation of the act of Congress of July 2, 1890, commonly known as the antitrust act.

II. That the defendants herein and each of them have both separately and in concert committed acts in unfair competition against mutual competitors, and that these defendants and each of them as to said matters be permanently and specifically enjoined and restrained from either directly or indirectly, separately or in concert, through their agents or employees, from in any manner committing or doing any acts of unfair competition against the competitors of either of these defendants, and that specifically each be permanently enjoined from thus doing or aiding in doing any of the following acts:

(1) From underselling any competing service with the intent or purpose of injuring or destroying a competitor of either of these defendants.

(2) From sending out traveling men for the purpose or with instructions to influence the customers of such competitors of either of these defendants, so as to secure the trade of such customers, without regard to the price.

(3) From in any manner or for any length of time selling his or its service in either plate, ready print, or matrices, either separately or one service with another, at less than a fair and reasonable price, with the purpose or intent of injuring or destroying the business of any competitor of either of these defendants.

(4) From threatening any customer of a competitor with starting a competing plant unless he patronizes one or the other of these defendants.

(5) From threatening the competitors of either of these defendants that they must either cease competing with defendants or sell out to one or the other of the defendants herein, and from threatening that unless they do their industries will be destroyed by the establishment of near-by plants to actively compete with them or by any other method of unfair competition.

III. That the defendants, Western Newspaper Union, Western Newspaper Union of New York, Central-West Publishing Co., George A. Joslyn, John F. Cramer, H. H. Fish, and M. H. McMillen, be, and they are hereby, permanently enjoined from either directly or indirectly, by themselves or through their agents or employees, from in any manner continuing to do any acts in unfair competition against the other defendant company in this petition named, to wit, American Press Association, as alleged in divisions 6 and 7 of this petition, and particularly that they be thus enjoined from doing any of the following acts:

(a) From combining or attempting to combine with said defendant American Press Association, either by purchase, stock ownership, or in any other manner.

(b) From holding out inducements, in the way of control or otherwise, to the said American Press Associations, or either of them, or any of their officers, agents, or employees, to induce or compel a combination between the Western Newspaper Union and its allied concerns and the American Press Associations.

(c) From selling any of their product or services at less than a fair and reasonable profit, or at cost, or less than cost, with the purpose or intent of injuring or destroying the interstate trade and commerce of the American Press Association, or of any other competitors.

(d) From in any manner, either directly or indirectly, causing any person or persons or company to purchase stock or become interested in the American Press Association for the purpose of or with the effect of harassing the said American Press Association by unconscionable or unreasonable demands for an examination of its books or inquiry into its business methods, or the institution of suits, with such or like purpose in view.

(e) From in any manner, either directly or indirectly, instructing, causing, or permitting their agents or employees or traveling salesmen throughout the country, to circulate reports or to intimate or convey the impression that these defendants will put the American Press Association out of business, or that the American Press Association will not be able to continue in business against the competition of the defendants, or that the American Press Association intends to or is about to combine with the defendants or the defendants with them, or to intimate or convey the impression that unless publishers approached by such salesmen deal with these defendants, they will be discriminated against as soon as the American Press Association shall be put out of business by the competition to which it is being subjected.

(f) From sending out traveling men for the purpose or with instructions to influence the customers of the other defendants hereto, so as to secure the trade of such customers, without regard to the price.

(g) From in any manner threatening or intimating that they will start competing papers at points where customers of the American Press Association or other competitors refuse to deal with them, either in plate or ready-print matter, or both.

(h) From in any manner promising or intimating to any publisher or other person who is a customer of the American Press Association, or any other competitor, that they will protect such customer against expenses and costs in any suit that may arise by reason of the repudiation of any contract between such competitor and such customer.

(i) From in any manner retaining or permitting the retention by their agents or employees of plate metal or other property belonging to the American Press Association or other competitor of said defendants.

(j) From in any manner offering bonuses of paper or plate service free or at a nominal price with the purpose and intent of inducing or enabling customers of the American Press Association or any other competitor to temporarily change to home-print papers and thus to assist them in breaking contracts with the said American Press Association with lessened chance of liability for breach of contract; and, furthermore, from offering in connection with such bonus to sell their service at less than the usual price to such customer of such competitor, and from offering as a part of such plan the continued use of free plate for the home-print side of the papers of such customer.

(k) From purchasing or acquiring stock in any other corporation, or interest in any other concern, engaged in the manufacture or sale of plate matter or ready prints, and not a party hereto; and from acquiring the property and business of any such company, unless application be made to and permission to make such purchase be granted by this court.

(l) From in any manner unfairly criticizing and abusing the method of the said American Press Association with reference to advertising,

or from doing any of said things through its weekly house organs, known as the Publishers' Auxiliary and the Western Publisher, and particularly from misrepresenting through said means the business and business methods of the American Press Association, with the intent and for the purpose of taking away the customers of the said American Press Association, or otherwise injuring its business.

(m) From in any manner continuing or participating in unfair attacks upon the said American Press Association, with the purpose of injuring or depreciating or destroying the value of the property and securities of the said American Press Association.

(n) From maintaining any auxiliary plant in any cities of the United States apparently independent, but in fact the property of the Western Newspaper Union, or its officers and stockholders, for the purpose and with the intent of making the newspaper trade generally believe such institutions to be independent.

IV. That the defendants American Press Association, Courtland Smith, W. G. Brogan, and Maurice F. Germond be perpetually enjoined from in any manner, either personally or as officers, or through their agents or employees, from continuing to commit or assisting in the commission of any acts of unfair competition directed against the defendants Central-West Publishing Co., Western Newspaper Union, or any other of these named defendants' competitors, and that they be permanently enjoined particularly from in any manner doing or committing any of the following acts:

(a) From selling its adless ready-print or plate service for less than a fair and reasonable price, or at cost, or below cost, with the purpose or intent of injuring the business of these named defendants or other competitors of the said American Press Association.

(b) From in any manner unfairly criticizing and abusing the method of the said Western Newspaper Union with reference to advertising through these defendants' circulars relating to its bureau of foreign advertising, or from doing any of said things through its weekly house organ, known as the American Press, and particularly from misrepresenting through said means the business and business methods of the Western Newspaper Union, with the intent and for the purpose of taking away the customers of the said Western Newspaper Union or otherwise injuring its business.

(c) From in any manner continuing or participating in unfair attacks upon the said Western Newspaper Union with the purpose of injuring or depreciating or destroying the value of the property and securities of the said Western Newspaper Union.

(d) From maintaining any auxiliary plant in any cities of the United States apparently independent but in fact the property of the American Press Association, or its officers and stockholders, for the purpose and with the intent of making the newspaper trade generally believe such institutions to be independent.

(e) From sending out traveling men for the purpose or with instructions to influence the customers of the other defendants hereto, so as to secure the trade of such customers, without regard to the price.

(f) From in any manner retaining or permitting the retention by their agents or employees of plate metal or other property belonging to the Western Newspaper Union or other competitor of said defendants.

(g) From in any manner offering bonuses of paper or plate service, free or at a nominal price, with the purpose and intent of inducing or enabling customers of the Western Newspaper Union or any other competitor to temporarily change to home print papers and thus to assist them in breaking contracts with the said Western Newspaper Union with lessened chances of liability for breach of contract, and, furthermore, from offering in connection with such bonus to sell their service at less than the usual price to such customer of such competitor, and from offering as a part of such plan the continued use of free plate for the home print side of the papers of such customer.

(h) From purchasing or acquiring stock in any other corporation or interest in any other concern engaged in the manufacture or sale of plate matter or ready prints and not a party hereto, and from acquiring the property and business of any such company, unless application be made to and permission to make such purchase be granted by this court.

V. That each of the defendants named in this petition be specifically and permanently enjoined and restrained from combining or joining in any acts—

(a) Of unfair competition either against another or against any mutual competitor;

(b) Looking toward a combination between any of these defendants;

(c) Any acts done with the intent or purpose of driving out of the industries in which they are now engaged of either of these defendants or of any of their competitors;

And as to each of the above acts defendants, and each of them and their officers and agents, are enjoined from doing them, either separately or in concert or conjunction with either of the other defendants.

It is further ordered that the defendants, Western Newspaper Union and the American Press Association, each pay one-half the cost of this suit to be taxed.

When in this decree the American Press Association is mentioned, reference is had to both the American Press Association organized under the laws of New York and the American Press Association organized under the laws of West Virginia, or if such portion of the decree is not appropriate to both, the one is intended to which it is appropriate.

KENESAW M. LANDIS, *Judge.*

[From the Omaha (Nebr.) World-Herald, Tuesday, July 7, 1914.]

FOR FAIR TRADE.

The World-Herald is very glad to acknowledge receipt of a letter from the American Fair Trade League, an organization of successful and widely known business men evidently in sympathy with the general purpose of the antitrust legislation now under consideration at Washington.

The letter, signed in behalf of the league by its secretary, Edmond A. Whittier, and mailed from headquarters in New York, is, in part, as follows:

"Admittedly the most far-reaching development in the formulation of antitrust legislation is the President's approval of the incorporation in the Federal trade commission bill of provisions declaring 'unfair competition' to be 'unlawful,' and prescribing that 'the commission is hereby empowered and directed to prevent corporations from using unfair methods of competition in commerce.' The commission, under these new sections of the bill, is further empowered to call upon the Federal courts to enforce its order in the event of disobedience.

"Senator Newlands, chairman of the interstate commerce committee, has reported the bill to the Senate thus amended. This legislation, now assured by this agreement between the executive and the legislative leaders of the majority party will be an admission by Congress of the evils which are the cause of the country-wide support of the Stevens bill 'to prevent discrimination in prices and to provide for publicity of prices to dealers and to the public.' * * * This new turn of affairs at Washington has resulted from constant pressure by consumers and small business men for laws which will really penetrate to the roots of dishonest business practices."

The letter quotes approvingly an editorial from a St. Paul newspaper—the News—which declares that "the nub of the legislation" now before Congress is this: "Declaring unfair competition in commerce unlawful and creating a commission to drag it into the open." "That's all there is," declares the editorial incorporated into this letter of the Fair Trade League, "to this awful threatened interference with prosperity."

The letter to the World-Herald from this organization of business men concludes in this wise: "A word from you will help every honest merchant and every consumer in the country. Will you say it?"

We will cheerfully. And we have repeatedly. And we will, furthermore, call to the attention of our readers the standing of some of these American business men who, rather than throw stones at a Democratic President and Congress for "interfering with business," are standing back of their efforts to set honest business free.

The president of the league is Charles H. Ingersoll, manufacturer of the famous "dollar watch." The vice president is Dr. Lee Galloway, professor of commerce and industry in New York University. On the executive committee list appear such names as these:

J. P. Archibald, ex-president National Retail Jewelers' Association.
Bartlett Arkell, president Beech-Nut Packing Co.
J. E. Baum, president Supplee Hardware Co., of Philadelphia.
Frank B. Connolly, vice president National Retail Grocers' Association.
Abraham Erlanger, president the "B. V. D." Co.
Henry B. Joy, president Packard Motor Car Co.
W. K. Kellogg, president Kellogg Toasted Corn Flake Co.
Alfred Lucking, counsel Ford Motor Car Co., and a number of others of similar high standing.

And on the advisory committee appear the names of officers of such well-known corporation as the Glastenbury Knitting Co., the Contoocook Mills Corporation, the Kryptok Co., the Interwoven Stocking Co., the Globe-Wernicke Co., and a great many others.

These business men want fair trade, regulated and honest competition—precisely what President Wilson and a Democratic Congress are striving to promote. They want to make it possible for men to do business in this country without fear of being crushed by trusts and monopolies, which is what the Democratic Party has been demanding for these many years. They are not asking that legislation to this end be delayed or defeated; they are asking that it be passed. They realize that such legislation will "interfere" not with honest and legitimate business, but with business that is neither and that is now interfering with business that is both. They are urging the country to support the President and Congress in passing laws that will stop the interference with business that is making prosperity lopsided, that has made trustified and monopolized business all-powerful, and that has all but closed the gates to independent and genuinely competitive enterprise.

The condition that has been, as well as the condition the Democratic Party is striving to establish, are well described in an editorial in the Indianapolis News, which says:

"A great, and in some respects a wonderful, system had been built up largely on privilege—tariff and other. Through enormous contributions to campaign funds the great trusts and railroads purchased favors from the Government. A few men, with a direct and selfish interest in the matter, decided what our taxes should be. It was a veritable feudal system, based not on birth but on wealth and usurped power. It is against this system that the national administration, backed by the people, has arrayed itself. We are seeking some measure of democracy in trade and commerce, as we have it in politics. We have to-day—and may we continue to have—a Government that is at least stronger than the Steel Trust. And with it we shall have a more widely diffused prosperity and a greater command of the good things of life than we have ever had. The people have resolved that this country shall be what it was meant to be, the country of the average man. Whatever suffering there is is due to the fact that the evils were allowed to grow to such enormous proportions as to make their eradication extraordinarily difficult. The blame must rest not on those who are now trying to right the wrongs, but on those who sat still and allowed them to reach their present proportions."

The World-Herald is rejoiced to have the evidence that many of the foremost business men of the country, business men who do business by adding to the national wealth rather than by gambling in and juggling with the wealth others have produced, understand and are in sympathy with the purposes of the Democratic Party.

Mr. WEEKS. Before the Senator from New Hampshire takes his seat I wanted to make one inquiry. I understood from his reading that one of the acts which Judge Landis described as unfair competition was a traveling man approaching the customers of another corporation and offering to sell to those customers at a lower price than they were purchasing.

Mr. HOLLIS. No; selling to them at all hazards, without regard to the price. Now, that is a well-known method of unfair competition.

Mr. WEEKS. What do you mean by all hazards?

Mr. HOLLIS. To make the sale without regard to the price; to make the sale anyway, so as to drive the other fellow out, and after you have driven him out and gotten rid of the competition, then have the field to yourself, and put your price up and charge extortionate rates. That is what is enjoined and very clearly put. I will read it again if the Senator would like to hear it.

Mr. WEEKS. That particular case I was interested in.

Mr. HOLLIS. I would be very glad to read it again:

From sending out traveling men for the purpose or with instructions to influence the customers of such competitors of either of these defendants, so as to secure the trade of such customers without regard to the price.

Those are the words that were overlooked by the Senator. I have no doubt he would agree that that was not fair practice. If not, he will disagree with Judge Landis.

Mr. WEEKS. I wanted to ask how a corporation would get new business in the ordinary course of affairs unless it did in some way shave the price at which it sold its goods.

Mr. HOLLIS. The Senator there qualifies and has just shown where the line is. "Without in some way." Some ways are perfectly fair, just as some restraints of trade are perfectly fair, but you must apply the rule of reason, which every judge has in his head, for the very purpose. It is perfectly easy in any definite case laid down before the judge, in connection with the other practices, to decide whether it is a reasonable and fair method of competition.

This statute leaves it to the judge to apply the rule of reason, precisely as our courts have under the Sherman antitrust act, and there can not be any difficulty in the application. There is no more difficulty than there is with all laws that are meant to reach evil practices. There is difficulty in the application of all of them. The humorous description read by the Senator from Utah [Mr. SUTHERLAND] shows how people in Texas, who ought to know, can not always tell how to class a jackass and a mule. We do not have great trouble here in Washington telling one from the other.

Mr. WEEKS. Let me ask the Senator from New Hampshire how much shave in price he should think would be fair, and where the line would be drawn.

Mr. HOLLIS. I could not tell until the Senator should tell me the class of goods and tell me in what district the sale was made and for what purpose the sale was made and many other things. I should not know enough about that until the evidence was put before me, but I will be frank to say that if the evidence was put before the Senator he could tell very quickly.

Mr. THOMAS. Mr. President, I would ask the Senator from Ohio [Mr. POMERENE] whether he is not willing to strike out lines 21, 22, and 23 on page 5 of his amendment? It is the paragraph providing for the publication of the reports of the commission.

Mr. President, I should like to see, if we are to refer to that subject at all, a paragraph prohibiting the publication of the reports of this commission. The people of the United States are buried under an avalanche of reported cases, ground out with constant and monotonous regularity by 50 or 60 tribunals, to which are added those of the Interstate Commerce Commission and those of some nisi prius tribunals. The result of this grist of decided cases upon American law is to reduce it to a state of chaos and confusion.

There is not a lawyer in the sound of my voice who is not able to advise his clients what the law is. But not a single one of them is able to advise his clients what the courts will determine the law to be. In appellate cases attorneys were accustomed at one time to prepare what was called a brief, which was submitted to the court for its guidance and instruction. The attorney's brief of to-day consists always of one and occasionally of two volumes, made necessary because of the multitudinous reported decisions upon every conceivable question which can vex the brain of the average attorney.

Now, every added decision serves to increase the confusion, and the time has come when authorities can be gathered, and able ones, too, in unqualified support of both sides of every conceivable human proposition. Practicing law nowadays entails a degree of labor and investigation upon the part of the practitioner and the courts that is appalling. If we are going to have a fresh batch of them coming from another source, let us rather suppress them and see to it that they are not published in official form.

One of the greatest men of this generation, Mr. President, is the former President of the Mexican Republic, Porfirio Diaz, and to my mind one of the chief evidences of his wisdom and statesmanship was his interdict upon the publication of all the decisions of his courts. The judges were required to pass upon and determine the controversy according to the written law and their understanding of it, without regard to precedents found in former opinions. While Mexico is not in any particular a model government, and never has been, yet I venture to say that in the administration of justice the courts were able to proceed quite as intelligently without, as our courts are able to proceed, with so many reported cases.

Mr. WALSH. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Colorado yield to the Senator from Montana?

Mr. THOMAS. I yield.

Mr. WALSH. Are we to understand that the Senator from Colorado is seriously urging that the publication of the reports of the supreme court of his State should cease?

Mr. THOMAS. Indeed, Mr. President, I am. I wish we could pass an amendment to our constitution making it a capital offense to issue another volume of reports. I never was more serious in my life. I want to say, and to repeat, and reiterate if necessary, that the increasing number and accumulation of reports is a curse to American law.

There are great judges, and there are great decisions; there are many reported cases which are really the fountain of much that is important and necessary in law; but, on the other hand, there is a vast quantity of reported cases, some of which are good, some of which are indifferent, and some of which are execrable. The Senator from Montana, one of the ablest and one of the most industrious lawyers I ever knew, will, I think, sustain the proposition that no important legal question comes to him for solution that does not, because of the multitude of cases, entail upon him a degree of labor that is necessary in a way but which ought not to be and would not be necessary if these cases had not been issued and circulated in published form.

Mr. WALSH. Mr. President, upon the assurance that the Senator speaks his earnest convictions, I desire to ask if he would like to see the body of the mining law that we have built up in the West swept out of existence and that we should be put back where we were when the present mining law was originally enacted?

Mr. THOMAS. Mr. President, I am glad the Senator from Montana has asked me that question. The so-called law of the Apex, founded upon the mining statute of 1872, has been construed by all the courts in the mining West, and by the courts of the United States for 42 years, and we know less to-day about the meaning of that statute than we did before the first reported case construing it was handed down.

Mr. President, no better illustration of the position that I am assuming can be offered here than the character of our law of mining as it has been construed and reconstrued and then construed some more, and still other constructions reconstrued, until a man with an Apex case to-day has a job before him that equals a Chinese puzzle.

Take our laws on irrigation. There are Senators here who come from arid States where the laws of waters under our statutes were fairly plain until court after court passed judgment upon them, until the reports of those courts were published, and until we confronted the impossible task of reconciling them. So, for heaven's sake—I will take that out; I do not want to trespass upon the favorite expression of my friend, the Senator from New Jersey [Mr. MARTINE]—but for the sake of the peace of the profession and for the welfare of business, which some Senators think is going to be harried to death, do not inflict upon them such a punishment as will be involved in the report of cases to be determined by this commission that you propose to create.

Mr. MARTINE of New Jersey. Mr. President, my legal friend from Colorado refers to New Jersey. I will say that some of us laymen are getting——

Mr. THOMAS. I did not refer to New Jersey, but to the Senator from New Jersey.

Mr. MARTINE of New Jersey. Very well. I only have to say that some of us laymen are getting great comfort out of the entanglements which my friend demonstrates are impending on our land from the overadjudication of our law. I feel that the public at least will agree with me, in view of the thoughts advanced by the Senator from Colorado, that consideration should be given to the sentiment expressed by the fellow who said "Here's that every preacher may kill a lawyer and be hanged for it." [Laughter.]

Mr. THOMAS. The Senator from New Jersey is in no danger, because I do not think he ever was or ever will be a lawyer. [Laughter.]

Mr. CRAWFORD. Mr. President, while I am in sympathy with the purposes of this bill, I find a good deal of trouble in reconciling myself to a proposition embodied in the amendment offered by the Senator from Iowa [Mr. CUMMINS], also in the one offered by the Senator from Ohio [Mr. POMERENE], and in the one presented by the Senator from New Hampshire [Mr. HOLLIS]. In every one of these amendments it is—

Provided, That no order or finding of the court or commission in the enforcement of this section shall be admissible as evidence in any suit, civil or criminal, brought under the antitrust acts.

While I have listened with all the charity I could to the explanations given for destroying the value of these orders and judicial decisions, I am not persuaded.

I notice in what is called the Clayton antitrust bill, of which there are many prints, that there is a provision known as section 6, in which, with great care, they preserve the value of every decision, so that it may be utilized in other litigations; but in the amendments to which I have referred by this exclusive language we practically destroy the value of a decision, no matter how many years have been occupied in bringing it to a culmination or how enormous has been the expenditure incurred. No matter how necessary it may be to some poor litigant who is struggling against the identical abuse decreed against in a given case—an abuse he may be suffering from at the hands of the same corporation—although the Government has litigated everything and has secured a decision of which he might, if the language of the statute would permit, have the benefit, he is excluded in this bill from having any benefit whatever. Its whole effect is to circumscribe and confine a decision to the particular issue in that particular case. I can not, somehow, believe that that is a limitation which we ought to incorporate in the law. In the antitrust bill, section 6, I read as follows:

SEC. 6. That whenever in any suit or proceeding in equity hereafter brought by or on behalf of the United States under any of the antitrust laws there shall have been rendered a final judgment or decree to the effect that a defendant has entered into a contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce, or has monopolized, or attempted to monopolize or combined with any person or persons to monopolize, any part of commerce, in violation of any of the antitrust laws, said judgment or decree shall, to the full extent to which such judgment or decree would constitute in any other proceeding an estoppel as between the United States and such defendant, constitute against such defendant conclusive evidence of the same facts and be conclusive as to the same questions of law in favor of any other party in any action or proceeding brought under or involving the provisions of any of the antitrust laws.

And in the pending bill——

Mr. WALSH. Mr. President——

The PRESIDENT pro tempore. Does the Senator from South Dakota yield to the Senator from Montana?

Mr. CRAWFORD. I yield.

Mr. WALSH. The Senator from South Dakota has not been here at all times; and I will ask, does he understand that that amendment has already been adopted by the Senate?

Mr. CRAWFORD. The amendments to which I am calling attention are one offered by the Senator from Ohio and another offered by the Senator from New Hampshire containing this language:

Provided, That no order or finding of the court or commission in the enforcement of this section shall be admissible as evidence in any suit, civil or criminal, brought under the antitrust acts.

Mr. WALSH. I am asking the Senator, does he know that this amendment simply embodies that language, the same language having already been adopted by the Senate?

Mr. CRAWFORD. Adopted by the Senate in the pending bill?

Mr. WALSH. Yes.

Mr. CRAWFORD. Then, how do you harmonize the language of the two provisions?

Mr. WALSH. The amendment is offered as a substitute for section 5. Section 5 has already been amended by incorporating therein that language, and it is simply carried into the amendment now proposed.

Mr. CRAWFORD. Why is it necessary in the amendments which are submitted to us now to have the language which I read, for instance, in the amendment offered by the Senator from New Hampshire:

Provided, That no order or finding of the court or commission in the enforcement of this section shall be admissible as evidence in any suit, civil or criminal, brought under the antitrust acts.

Mr. WALSH. I inquire of the Senator if he knows that the Senate has already adopted that language?

Mr. CRAWFORD. I did not, as a matter of fact; but if the Senate has, my query is still pertinent. Why do we insert this language? Is it proposed to adopt this language in the pending amendment?

Mr. HOLLIS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from South Dakota yield to the Senator from New Hampshire?

Mr. CRAWFORD. I do.

Mr. HOLLIS. If I may answer the Senator from South Dakota, I will say that the amendment referred to by him has already been adopted by the Senate by a vote of 40 to 13, which seems to be a very fair index of the way the Senate looks upon it. When I prepared my substitute, naturally I did not want to encounter any more opposition than was necessary; so I inserted whatever the Senate had already adopted, and made it a part of my amendment. I do not care much about that particular amendment, but I can state the reason for it, I think.

Mr. CRAWFORD. Well, if the Senator will permit me, I want to get myself located. If I understand correctly, what I have just read from what is known as the Clayton antitrust bill has been adopted as an amendment to the pending bill, known as the trade commission bill.

Mr. CLARK of Wyoming. No.

Mr. CRAWFORD. Then, what am I to understand?

Mr. HOLLIS. Mr. President, I will endeavor to explain it to the Senator if he will permit me. The Federal trade commission bill has been before the Senate for several days, and a day or so ago the amendment to which the Senator has referred was adopted to section 5, so that those Senators who have proposed amendments to that section have embodied in them the amendment already agreed to.

Mr. CRAWFORD. I am sure I was not here when the roll was called on that proposition.

Mr. HOLLIS. Mr. President, I should like to explain to the Senator what I think to be the reason for the amendment. The provision which has just been read by the Senator from the Clayton antitrust bill involves a completed monopoly, a completed restraint of trade to be prosecuted under the solemn penalties of the Sherman antitrust law, and it is to be presumed that when a man is attacked under the Sherman antitrust law he will put his best foot foremost and make all the defense that he has. Under the trade-commission bill there is no pnalty, except an injunction; there is no punishment of any kind; and a man might well be excused for saying, "Well, I do not think this amounts to very much, and I will not trouble much about it; but I will go up and hear what they have to say." He will have a right to appeal in any event, if the pending amendment is adopted. The Senator can well see that under such circumstances a man might not put on all his witnesses or produce all his evidence, not thinking that the charge of employing an unfair method of competition was as serious as a charge of having created a monopoly or having restrained interstate commerce, for which he might be put in jail. That is my reason for thinking that this amendment is wise.

Mr. CRAWFORD. Mr. President, if this matter is foreclosed, I do not care to take up the time of the Senate unnecessarily; but I think it is a mistake. I hold in my hand, and I am going to ask to have incorporated in the RECORD as a part of my remarks without reading, a letter, a copy of which I presume every Senator has received, written to the President of the United States by Mr. Gustavus A. Rogers, a gentleman with whom I am not acquainted, who was of counsel in some motion-picture litigation, together with a letter from the then Attorney General, Mr. Wickersham, attached to it, showing, to my mind, one of the gravest cases of unfair competition yet brought to light, just such a case as has been referred to in connection with this bill, and just such a case as is sought to be reached by this legislation.

I do not know what the present status of this litigation is, but that is immaterial; it will illustrate the thought I have in mind just as well. Suppose after a long series of years which may have involved as much expense and struggle and litigation as the suit against the Tobacco Trust or the suit against the Standard Oil Trust, an action brought under this bill which we are now proposing to enact had resulted in a finding that the Motion-Picture Trust was guilty of unfair competition; suppose that enormous expense had been incurred; that the matter had ran through a long period of time, perhaps several years, and finally the commission had found deliberately that the Motion-Picture Trust was guilty of unfair competition under this law; that then that trust went into court to have the order of the commission reviewed by the court, and that the case had pursued its long and tortuous career through all the courts in which it could be heard, and finally it had been determined by the Supreme Court of the United States that the trust was guilty of unfair competition in violation of this act. That has settled the issue between the United States and the Motion-Picture Trust; but here is John Brown, or John Smith, or John Jones, who wants to get motion-picture films, and who in some subsequent proceeding desires the benefit of the decision which has been rendered in the previous case. He has not the money to incur the enormous expense of relitigating this whole subject, and here is a finding of the commission and here is the decision of the highest tribunal of this land in a case in which this whole matter has been thrashed out, and yet he can not use them.

Mr. CUMMINS. Mr. President, the provision does not touch such a case at all.

Mr. CRAWFORD. Why not?

Mr. CUMMINS. Simply because it does not.

Mr. CRAWFORD. I am not referring to the antitrust act. I say, suppose under the trade-commission bill an action were brought against the great Moving-Picture Trust, accusing it of unfair competition.

Mr. CUMMINS. The provision to which the Senator has referred would not preclude the use of the order of the commission or the judgment of the court in such a case.

Mr. CRAWFORD. No; but in any subsequent proceeding brought against that trust under the antitrust law this provision would not allow the previous finding or judgment to be used.

Mr. CUMMINS. If the Government of the United States brings a suit under the antitrust law of 1890, this provision would prevent the judgment of the commission or of the court being used in that case.

Mr. CRAWFORD. Yes; or if a suit were brought by an individual to recover damages.

Mr. CUMMINS. Not for unfair competition, because such a suit can not be maintained under the antitrust law.

Mr. CRAWFORD. It looks to me as though we are closing the doors unnecessarily to a class of people who may be absolutely helpless because of their lack of financial ability to prosecute a separate action. After a proceeding is had before the commission, the issue is fought out, and judgment is obtained, why should not it be available, just as judgments and decrees are available in all other procedure, without any limitation?

Mr. CUMMINS. It will be, except that the judgment of the court or the judgment of the commission is not admissible in evidence in a suit, civil or criminal, brought under the antitrust law.

Mr. CRAWFORD. The Senate has acted upon this matter, but I want to express my doubt about the propriety of such a provision being placed in the bill. I ask to incorporate a copy of the letter of Mr. Rogers and the letter of the Attorney General as a part of my remarks.

The PRESIDENT pro tempore. The Senator from South Dakota asks unanimous consent that the letters which he sends to the desk may be printed in the CONGRESSIONAL RECORD. Is there objection? The Chair hears none, and the order is made.

The matter referred to is as follows:

NEW YORK, *July 27, 1914.*

Hon. WOODROW WILSON,
President of the United States.

YOUR EXCELLENCY: May I have your permission to place before you a situation which, I believe, will have some points of interest to you in your very commendable campaign in the interest of the people as against the "big interests" that are unlawfully operated in the form of vicious monopolies?

While the matter to which I will refer herein is a recital of facts regarding the so-called Motion Picture Trust, I am convinced that its operations are illustrative of what is generally being resorted to in other fields of industry and endeavor, prompting me to make the following recommendation for your consideration:

(1) That the word "hereafter," in section 6 of the antitrust bill, be stricken out, so that it shall read as follows: "That whenever suit or proceedings in equity brought or now pending * * * such judgjudgment or decree shall * * * constitute prima facie (conclusive) evidence of the same facts * * *." (I am informed that "conclusive" in the original draft has been changed to "prima facie.")

(2) That the language in section 3, which now provides penalties only against the owner or operator of any mine, etc., who refuses arbitrarily to sell his products to a responsible person, firm, etc., be broadened so that it shall provide against the refusal to sell any commodity where there are trade relations between the parties sought to be terminated by a combination for the purpose of creating or furthering a monopoly.

(3) That the bill provide that where trade relations have been once established between parties, it be not only unlawful to terminate these relations or refuse to sell the commodity for the purpose of creating or furthering a monopoly, but that the injured party may have a preliminary and final injunctive relief under the act compelling the continuance of the delivery of the commodity.

Prefatory to my further statement I beg leave to be permitted to say that I understand from newspaper reports that you are being importuned to suggest a modification of some of the provisions of the Clayton bill now before the Senate for action.

To my mind weakening any part thereof would be an unfortunate step, and I believe it should be made more comprehensive, as above suggested, in support of which I beg leave to refer you to my statement before the Judiciary Committee of the House of Representatives on its hearings on trust legislation, and which appears in the printed report at pages 470 to 502, inclusive, volume 1, together with a list of recommendations which I submitted and which appears at page 1777, volume 2, together with the opinions of Judge Hand and Chief Judge Lacombe, which appears at pages 1778 and 1779, volume 2.

A reading of the matter to which I refer immediately demonstrates that unless some specific statutory provision is made preventing persons or corporations controlling a considerable percentage of a commodity from refusing to sell their goods to a purchaser who applies in good faith to buy on the same terms that they are selling to others that the small business man had no hope of remaining in his business should the combination seek to prevent him from doing so either in its own interest or because of some dislike to the intending purchaser.

The effect of some of the operations of the General Film Co. is referred to in House Report No. 627, which appears at page 1965 of the printed volumes above referred to, the pertinent portion of which reads as follows:

"Where the concern making these contracts is already great and powerful, such as the United Shoe Machinery Co., the American Tobacco Co., and the *General Film Co.*, the exclusive or 'tying' contract made with local dealers becomes one of the greatest agencies and instrumentalities of monopoly ever devised by the brain of man. It completely shuts out competitors, not only from trade in which they are already engaged, but from the opportunities to build up trade in any community where these great and powerful combinations are operating under this system and practice. By this method and practice the Shoe Machinery Co. has built up a monopoly that owns and controls the entire machinery now being used by all great shoe manufacturing houses of the United States. No independent manufacturer of shoe machines has the slightest opportunity to build up any considerable trade in this country while this condition obtains. If a manufacturer who is using machines of the Shoe Machinery Co. were to purchase and place a machine manufactured by any independent company in his establishment, the Shoe Machinery Co. could, under its contracts, withdraw all their machinery from the establishment of the shoe manufacturer and thereby wreck the business of the manufacturer. *The General Film Co.*, by the same method practiced by the Shoe Machinery Co. under the lease system, has practically destroyed all competition and acquired a virtual monopoly of all films manufactured and sold in the United States. When we consider contracts of sales made under this system, the result to the consumer, the general public, and the local dealer, and his business is even worse than under the lease system." (The italics of the "General Film Co." are mine.)

Briefly stated, what occurred in the motion-picture film industry is: That in the latter part of 1908 all of the then manufacturers of the American-made film, 10 in number, combined, got out a form of so-called license agreement on pretended patents (I say pretended, because the main patent had been declared invalid in the first place by the Federal court of the southern district of New York, and later its invalidity was also declared by the Court of Appeals of the District of Columbia), and gave the dealers their choice between subscribing to this agreement, most harsh and arbitrary in its terms, or getting out of the business entirely for want of a supply of the commodity.

Among the more drastic provisions of the agreement were:

(1) That those dealing with the so-called licensed manufacturers (the combination which then controlled at least 95 per cent of American-made film and a large percentage of the foreign importation) would not be permitted to deal with or handle any other film.

(2) That the film which had theretofore been sold outright would thereafter be leased, and by artifice compelling the dealers to return to the manufacturers the film which they then had on hand and which they owned outright, and replacing it in the future with films which were only leased by the manufacturers, so that when the combination got ready to cut off the supply the dealer would have no other film with which to compete.

(3) A provision under which the manufacturers claimed the right to terminate the agreement, with or without cause, on 14 days' notice.

After driving the dealers into signing this agreement, the manufacturers thereupon formed a company known as the General Film Co., to which the manufacturers agreed to make its supply, the company being organized on paper and with little or no capital stock actually paid in, and thereupon proceeded, by means of the agreement and its power, to drive all of their dealers out of business. This was usually accomplished by an enforced sale under threat of invoking the 14 days' termination clause in the contract.

There are many instances referred to in the record in the Government action, to which I shall hereafter refer, in which notice was sent to take effect immediately, without giving the dealer 14 days' time and destroying him immediately, his customers being taken up by the General Film Co. On the enforced sale it was not a cash transaction with the General Film Co., but, on the contrary, they forced the man to turn his business over to it and then agreed to pay him certain installments extending over a period of five years, and gave him some preferred stock in the company. As a result of these operations, in the space of little more than a year every one of the dealers in the United States, of whom there were about 150 in number originally, were bought up or arbitrarily driven out without buying them up, until there remained only one, our client, i. e., the Greater New York Film Rental Co., which the General Film Co. tried to buy out in the autumn of 1911. Our client refusing to sell, an attempt was made to terminate the agreement and refusal announced by the manufacturers to deal further with our client.

We thereupon took the matter to court, and through the process of the State supreme court, and the injunction order of his honor Learned Hand, of the Federal court of the southern district of New York, we succeeded in compelling delivery of the film by these manufacturers until February, 1913, when the manufacturers again announced their refusal to deliver films to our client in the interest of its own company, i. e., General Film Co. Whereupon, the Department of Justice, Mr. George W. Wickersham at that time Attorney General, writing under date of February 20, 1913, to Mr. George R. Willis, of counsel for the General Film Co., directed the manufacturers during the pendency of the suit instituted, on our complaint in the meantime, by the Government under the Sherman Act, to do business with our client, the Greater New York Film Rental Co. under the same terms and conditions as it was doing business with any of the branches of the General Film Co. and to make no discrimination against our client and in favor of the General Film Co. The portion of the letter referred to reads as follows:

"Of course, while the suit brought by the United States against the Motion Picture Patents Co., and others, is pending, the department expects each of the licensed manufacturers and importers, each of whom is a party to such suit, to do business with the Greater New York Film Rental Co. on the same terms and conditions as it is doing business with any of the branches of the General Film Co. and to make no discrimination against the Greater New York Film Rental Co. and in favor of the General Film Co."

I am attaching a copy of the letter for your perusal.

For a short time after writing the letter, the manufacturers, possibly under the advice of their counsel, complied with the request therein made, continued to make deliveries, but in the autumn of the same year they resorted to the subterfuge of getting out so-called special or exclusive films, which were widely advertised by the manufacturers as being supplied exclusively to or by the General Film Co., and since our client was the only remaining competitor of the General Film Co. was equivalent to advertising that our client could not get these goods.

Having arranged this plan, the General Film Co. began to and did use these special goods to induce the customers of our company to leave it and become customers of the General Film Co. That was accomplished by offering the special features free of charge, or else by giving them free to some competitor of our client's customers free of charge to use in competing against the other man's business.

In the Government suit there was direct testimony of at least one employee of the General Film Co., and in the suit between my client and the General Film Co. testimony of another employee, to the effect that they were instructed specifically as employees of the company to use these special features to win away the customers of our client. I

could recite a great many other instances of this method of unfair competition employed at a time not when the Government agency was inactive, for however reprehensible it would be before that time, the conduct becomes more objectionable when I tell you that these things which I am reciting have occurred since the action was instituted by the Government.

Before I close I would like to call your attention to an incident of recent occurrence. Lately a demand was created for a certain type of film known as the Pickford films, manufactured by one of the ten in the combination. Our client ordered a quantity of these films from that manufacturer, i. e., the Biograph Co., and they were told abruptly and in a letter in cold type that the manufacturer refused to deliver them—this despite Mr Wickersham's letter referred to. In addition to its refusal, the Biograph Co. circularized the exhibitors, as I am informed, throughout the United States with the information that the Pickford film which had been previously manufactured would now be reissued, but distributed exclusively by the General Film Co.

NOTE.—The Biograph Co. referred to (one of the manufacturers in the combination) and the General Film Co. (the sole selling agent of the 10 combined manufacturers) have a common officer, to wit, Mr. Jeremiah J. Kennedy, who is the president of both companies. The holding company owning the patents, i. e., the motion picture patents, and the Biograph Co., have a common officer, i. e., Mr. Harry N. Marvin, who is the vice president of both companies. The General Film Co. and the manufacturers have common officers, for the principal officer of every of the manufacturers is also a director of the General Film Co.

The recital of this situation carries its own force, and I will not burden you with a characterization of it, but will leave that to your experienced and trained mind.

Of course, my object in writing this letter to you I hope will not be construed as a mere recital of the wrongs or grievances, actual or fancied, committed against my client, nor as a reflection or criticism upon the conduct of any public official, although I must say that no better handling of the situation could have been expected by the people of this country than that of Mr. Edwin P. Grosvenor, Assistant Attorney General, who had charge of the prosecution of the Government suit, and the masterly way in which it was generally handled by the Department of Justice.

The purpose intended to be served in writing at this time to you is that since I have observed in the newspapers that you have received delegations from time to time and that you are to receive another on Wednesday next who seek to convince you that the bills as presently drawn or contemplated are either too drastic or that their effect would be serious to the business interests of the community, that you might, honored sir, have before you to combat their argument some concrete examples of the operations of powerful combinations when they are unrestrained and unbridled by law, or believe themselves so to be. What higher demonstration can there be of the disregard of the well-being of another man than what I have put before you in this letter as the nefarious practices and operations engaged in at a time when the defendants were actually in a court of equity, being brought there by the Government for an alleged past violation of law? The explanation can be found only in that their acts are the expression of the belief in the minds of those engaged in these operations or those advising them that no law presently prevents this conduct, however wrong it may be. If this be so, all fair-minded men must agree that the time has come to change the law, so that these practices shall come within the condemnation of both the civil and criminal laws, if they do not now.

May I without further imposing on your patience add a few additional paragraphs as argument in support of the three recommendations I submit to you?

As to the first, the proposed legislation as framed in actions now in court at the suit of the Government under the Sherman Act, the decree would not be available for use by injured parties in private suits. To my mind this seems wrong on principle. In a large number of suits now pending undoubtedly the Government will be successful. The prosecution of these suits has cost the Government several hundred thousand dollars, the expense of which would have to be incurred over again by private individuals to get an adjudication in suits for damages under the treble-damage provision. In many instances, if not in nearly every one the cost of this litigation is so expensive as to be almost prohibitive. No good reason can be advanced from an economic standpoint as to why injured parties should not have the benefit of decrees that may hereafter be entered in suits already brought. I am advised by others and my own research leads me to the conclusion that no constitutional question can be raised against provision being made for the use of decrees hereafter entered in Government suits now pending as evidence in suits hereafter brought by private parties. The legislation would not be ex post facto, and merely relates to a rule of evidence or procedure.

My views upon the subject are shared by Special Assistant Attorney General Grosvenor, whom I am informed has written a letter on the subject, under date of May 14, 1914, to Judge Clayton, as chairman of the Judiciary Committee of the House of Representatives, in which he recommends that the word "hereafter" be stricken out of section 3. I assume the letter is on file with Judge Clayton's committee. I have not a copy thereof or I would transmit it. I believe that Mr. Grosvenor's connection with the Department of Justice for several years and his activity in the Harvester, the Bathtub, and the Motion Picture Trust suits, which were in his charge, entitle his suggestion to serious consideration.

As to recommendations 2 and 3 that I have made, it must be apparent that in a situation such as I have described in the pages of this letter the instrumentality which makes monopolistic combinations so complete and secure in their operation and the achievement of the result they seek, is the power given to cut off the supply of its commodity at a moment's notice, thereby compelling its customer or competitor to yield to every wish and exaction of the combination formed against him and the people generally.

Take away from the trust the right to arbitrarily refuse its commodity to responsible persons and you uproot the very foundation on which the combination stands and you also destroy the most oppressive instrumentality it employs.

The State and Federal courts have ruled that a person can not be compelled, in the absence of contractual obligation, to maintain business relations with another, and unless this obligation is created by statute the evil practice can not be prevented unless the courts shall in future cases determine that the obligation exists irrespective of statute, a view for which I have always and still contend for.

In closing, I desire to give expression to the thought that I realize that representation is being made by the business men throughout the country that an attempt at legislation at this time, drastic in its nature, would involve us in business depression and possible panic, and that the interests of the people at large demand that cautious action be taken. While I am mindful of the duty that we owe as citizens of our country to prevent it being plunged into financial disaster, if the term is not too strong, I can not subscribe to the argument advanced, for I believe that we are at a point in our economic career which requires that we should either have a complete surgical operation, forever removing the evil business growths about us, and preventing their recurrence; or confess that the disease of depredation prevalent has such a firm hold on us that we must submit resignedly to "big business" and "big interests" for fear that otherwise they will make their disfavor apparent to the detriment of the people and the Government. I, for one, refuse to believe that any man, or any set of men, however numerous or financially great, are entitled to occupy such a position of power in our country and under our system of government. I know that you will not be misled by such specious argument. It may be that if you stand firm and insist, as our Chief Magistrate and Executive, that the statute shall be written on the books in no uncertain language, that the country and possibly even you may suffer temporarily; but the lasting good and benefit that will eventually and surely come will place upon your head a crown of esteem and respect that no man will dare to attempt to remove; the present and future generations will profit thereby; the door of opportunity in trade now closed against the poor and small business man will be opened for him, and new hope will be kindled that will create an unequaled era of prosperity.

Again apologizing to you for the length of this letter and thanking you for such consideration that you may give the subject, I have the honor to subscribe myself.

Obediently, yours,

GUSTAVUS A. ROGERS.

COPY OF LETTER OF FORMER ATTORNEY GENERAL HON. GEORGE W. WICKERSHAM RELATING TO A CONTINUANCE OF THE SUPPLY OF FILM TO THE GREATER NEW YORK FILM RENTAL CO.

FEBRUARY 20, 1913.

GEORGE R. WILLIS, Esq.,
239 Cortlandt Street, Baltimore, Md.

DEAR SIR: The department is in receipt of your letter of the 19th instant, addressed to Mr. Grosvenor, relating to the cancellation by the Motion Picture Patents Co. of the license of the Greater New York Film Rental Co.

I note your statement that in view of the conference at this office on February 18, 1913, the directors of the Motion Picture Patents Co., who issued the notice to the Greater New York Film Rental Co., have decided to withdraw that notice, and to notify the licensed manufacturers and importers of such withdrawal, and to withdraw the notices instructing licensed manufacturers and importers that they were not authorized to supply motion pictures to the Greater New York Film Rental Co. after February 28, 1913. This action is satisfactory to the department.

I desire, however, to direct your attention to that paragraph in your letter in which you state that the Motion Picture Patents Co. is not empowered to force the licensed manufacturers and importers to supply motion pictures to the Greater New York Film Rental Co., and that if any licensed manufacturer or importer should refuse to supply motion pictures to the Greater New York Film Rental Co., such an act of any licensed manufacturer or importer should not preindice the Motion Picture Patents Co. or its directors, and such refusal ought to be considered by the Department of Justice on its own merits as to the act of the manufacturer or importer so refusing.

Of course, while the suit brought by the United States against the Motion Picture Patents Co. and others is pending the department expects each of the licensed manufacturers and importers, each of whom is a party to such suit, to do business with the Greater New York Film Rental Co. on the same terms and conditions as it is doing business with any of the branches of the General Film Co., and to make no discrimination against the Greater New York Film Rental Co. and in favor of the General Film Co. If any of the licensed manufacturers or importers should so discriminate, in the apparent effort to accomplish the purposes set out in the Government's petition and therein alleged to be unlawful, it may be necessary for the Department of Justice to apply for a temporary injunction in the suit, or to take such other action under the Sherman Act as may seem expedient in the premises.

I am sending copies of your letter of the 19th, above referred to, and of this letter, to each of the counsel representing one or more of the defendants in the suit, and also copies to counsel for the Greater New York Film Rental Co.

Respectfully,

GEORGE W. WICKERSHAM,
Attorney General.

Mr. SUTHERLAND. Mr. President, I desire to submit a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state his parliamentary inquiry.

Mr. SUTHERLAND. I desire to inquire whether or not it would be in order to ask to have the question involved in the amendment proposed by the Senator from Ohio [Mr. POMERENE] divided, so that the Senate might vote first upon the amendment down to and including line 23 and then upon the part of the amendment covered by lines 24, 25, and 26, the last lines including the matter to which the Senator from South Dakota [Mr. CRAWFORD] objects and to which many of us were opposed?

The PRESIDENT pro tempore. Unquestionably. The amendment presents two distinct propositions, which can be separated and a separate vote taken at the instance of any Senator.

Mr. SUTHERLAND. Well, I ask that that be done.

Mr. POMERENE. Mr. President, if the Senator will permit me, I think I can simplify the matter somewhat by striking out, with the permission of the Senate——

The PRESIDENT pro tempore. The Senator can amend his amendment, no amendment to it having been offered.

Mr. POMERENE. By striking out lines 24, 25, and 26 on page 5 and then offering the amendment in lieu of all of section 5, save the amendment heretofore adopted, and to be inserted immediately before that amendment.

Mr. WEST. Mr. President, what are the lines the Senator proposes to strike out?

Mr. POMERENE. The three lines embracing the matter to which the Senator objected a moment ago.

Mr. CUMMINS. Mr. President, when we enlist in a man's war I think we ought to carry a man's weapons and use them with all the effectiveness of which we are capable. It seems to me that those who favor this amendment are verifying the classical allusion of Daniel Webster that oftentimes the conduct of the war does not come up to the sounding phrase of the manifesto.

I am not in favor of that part of section 5 which prescribes the court procedure, and I rather think I would prefer the amendment offered by the Senator from Ohio, if I were compelled to choose between the two. In my judgment, however, we are crippling the enforcement of the law when we adopt the pending amendment.

Passing now the question of the sufficiency of the law itself, assuming that "unfair competition" is a sufficient declaration of law, and looking only to the enforcement, I believe we ought to pursue one or the other of two courses—we ought either to clothe the commission with the authority to institute a suit in the courts of the United States for the enforcement of the law and to enjoin offenders, as we have provided in the antitrust act, or we ought to give to the action of the commission all the effect which under the Constitution we can give it. To make the commission simply the open door for reaching the court is, in my opinion, to impose upon both the public and the private interest an unnecessary and indefensible burden and to retard the execution of the statute with unreasonable delay.

I personally favor the policy that will give to the order of the commission all the effect which under our institutions we can give it. I desire to follow the policy of the interstate-commerce law and to give to the trade commission and its order all the authority and all the effect which we give to the orders of the Interstate Commerce Commission in determining matters of unjust preference, unjust discrimination, or unreasonable rates. I believe we have the constitutional right to give the order that effect. I believe it will be for the welfare of business, for the stability of commerce, to do so, and I am sure that it will be for the general interest to do so.

I have an amendment, Mr. President, which I offered yesterday, and then withdrew in order to give opportunity for a further conference with regard to this particular subject, which, if it be in order under the rules, I shall present as a substitute for the amendment of the Senator from Ohio; but if it be not in order at this time I shall offer it at a later time. This is a proper occasion, however, to express the difference between my view of the most effective procedure on the part of the commission and the view embodied in the amendment of the Senator from Ohio.

The amendment which I shall propose is not essentially different from the amendment of the Senator from Ohio until we reach the stage of a finding and an order by the commission. In so far as the proceedings which occur before that time are concerned, the difference between the two amendments is largely a matter of phraseology; but then the separation begins.

I regret very much that I feel impelled to part from those with whom I have been associated in the defense of this bill. I have not forgotten the memorable struggle of 1906—a struggle that never will be forgotten by the people of the country; a struggle that continued on the floor of the Senate for days and for weeks—between those who were representing the views of the railroads, and those who were representing the views of the people. The issue was whether there should be what was then termed a broad review or whether there should be a narrow review of the orders and acts of the Interstate Commerce Commission.

Those who were arguing the matter from the standpoint of the railroad companies insisted that the cases tried by the Interstate Commerce Commission should be tried de novo in the courts. Those who were enlisted on the side of making an effective statute of regulation insisted that the jurisdiction of the courts should be limited to the constitutional field; that is to say, that the action of the commission in determining what are reasonable rates and what are unjust preferences or discriminations should have some effect, and that, in so far as we could do it constitutionally, we should make the orders of the commission final.

I realize that we can not make the order of a commission final in all respects, and we ought not to make it final; but there is a vast difference between confining the jurisdiction of the court as narrowly as we can and opening it up to a complete new trial whenever we reach a judicial tribunal. The amendment which I have offered or will offer is fashioned upon the policy of the interstate-commerce law, and follows the powers of the Interstate Commerce Commission.

In my amendment it is provided that—

> If upon such hearing the commission shall find that the person, partnership, or corporation named in the complaint is practicing such unfair competition, it shall thereupon enter its findings of record and issue and serve upon the offender an order requiring that within a reasonable time, to be stated in said order, that the offender shall cease and desist from such unfair competition.

Then I provide, exactly as is provided in the interstate-commerce law:

> Any suit brought by any such person, partnership, or corporation to annul, suspend, or set aside, in whole or in part, any such order of the commission shall be brought against the commission in a district court of the United States in the judicial district of the residence of the person or of the district in which the principal office or place of business is located, and the procedure set forth in the act of Congress making appropriations to supply urgent deficiencies and insufficient appropriations for the fiscal year of 1913, and for other purposes, relating to suits brought to suspend or set aside, in whole or in part, an order of the Interstate Commerce Commission shall apply.

Senators will remember that the statute to which I refer here is the one which abolished the Commerce Court, restored the jurisdiction of the district court, and reenacted the procedure which should be followed in such cases.

This is not a fanciful difference. You will mark my amendment says that upon the entry of the order of the commission if any corporation or person aggrieved desires to bring a suit against the commission to set aside or annul its order he can do so, just as the interstate-commerce law provides; but the vital inquiry is, What may the court examine when a person aggrieved by the order of the commission institutes a suit of that character?

Under the amendment of the Senator from Ohio there is a retrial. It is a trial de novo. The order of the commission counts for nothing, except that it becomes prima facie evidence. That is keeping the promise to the ear and breaking it to the hope. Prima facie evidence in a suit in equity in which all the evidence is before the court confers no advantage upon the person in whose behalf the findings are said to be prima facie evidence. The court must take the record as it is finally made and decide the case according to the very right of the matter.

There are some instances in the law in which the burden of proof is of value or where it is of advantage to have under the law a prima facie case upon a certain showing. It is not so in suits that are brought or will be brought to set aside or annul the action of the commission. It is technical rather than substantial. The real effect of the amendment of the Senator from Ohio, as I think he will concede, is to open to the court a retrial of the entire case upon its merits, just as it was contended in 1906 that when a railroad company assailed the order of the commission with respect to discriminations or with respect to rates there ought to be an open field and a retrial in any court to which the case might be brought.

Mr. POMERENE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Ohio?

Mr. CUMMINS. I yield.

Mr. POMERENE. Permit me to call the Senator's attention to this limitation: Under the provisions of the pending amendment, after the application is made, the proceeding in the district court will be based entirely and exclusively upon the record as made before the commission, except that the court above may permit the introduction of new evidence that was not known to the party offering it at the time of the trial below, or which, if known, could not have been produced with reasonable diligence. My belief is that that is going to place a limitation upon the number of new trials, and it avoids the temptation which exists in some jurisdictions where there are two trials of not in fact trying the case upon its merits in the tribunal below, but reserving the evidence until the last trial.

Mr. CUMMINS. I understand that, Mr. President, perfectly. It is a mere detail. When finally the evidence has been taken and it has been laid before the court it matters not whether it was taken before the commission or whether it is subsequently adduced, the court has the record, and the court has a free, open field to enter just such decree upon the record before it as in its opinion ought to have been entered by the trade commission. It is precisely like the practice in my own State of an appeal from a justice of the peace to the district court.

I desire now to point out what the difference is.

Mr. STONE. Before the Senator enters on that——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Missouri?

Mr. CUMMINS. I yield.

Mr. STONE. If I correctly understand the Senator from Iowa in explaining his amendment, it follows substantially, if

not literally, the methods of the interstate-commerce act, so far as courts are authorized to review the findings of the commission, and the Senator from Iowa contends that the amendment offered by the Senator from Ohio provides a different method of judicial interference, enlarging the power and jurisdiction of the courts over the action of the commission.

If that contention is true, if the Senator from Iowa is correct, then I submit to the Senator from Ohio this question: Why would it not be safer and in every way better to adopt that method of judicial procedure which has been tested out, which has been established, with regard to the Interstate Commerce Commission and the courts; in other words, to let exactly the same rule, as far as the courts go, apply in the case of the trade commission that do apply in the case of the Interstate Commerce Commission?

I am assuming now that the criticism which the Senator from Iowa makes on the amendment of the Senator from Ohio is correct, and that his statement of his own amendment is likewise correct.

Mr. POMERENE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Ohio?

Mr. CUMMINS. I yield.

Mr. POMERENE. If I may be permitted to reply just briefly, the class of questions, both legal and of fact, which are triable before the Interstate Commerce Commission, while great in number, are not very varied in character. In the matters involved in the pending legislation we are seeking to correct methods of unfair competition. This legislation is criticized, and with great force, from certain directions, because we are not able to define definitely what unfair competition is. I recognize that uncertainty; but I also recognize the fact that the proposed bill is indefinite in that respect. It is no more indefinite than the law is now on the subject.

Recognizing that this criticism is justified in many respects, that the law is more or less uncertain, I, for one, am not willing to submit to the exclusive jurisdiction of a commission composed of five men without a reasonably complete method of review.

We do not know that this commission is going to be composed of trained lawyers, and I do not believe it ought to be composed entirely of trained lawyers. I recognize the fact that business men of great ability and experience may be of assistance upon this commission in deciding questions of fact. But I have never yet been able to arrive at that point where I am willing to ascribe all wisdom to five men because they may be called a commission and cast a reflection upon judges because they are called judges.

Until we are able to define more explicitly what unfair competition is, and until we are able to lay down some more specific rules than we seem to now, I want the corporation which may be ruled against to have an opportunity to have its rights adjudicated in a proper tribunal. For that reason, I believe that we ought to provide for a review somewhat after the nature of what has been set out in the amendment.

Mr. SAULSBURY rose.

Mr. CUMMINS. Will the Senator not allow me just a moment to make a suggestion upon this particular question?

Mr. SAULSBURY. I can not help it, sir.

Mr. CUMMINS. The Senator from Missouri can have no doubt, after hearing the statement of the Senator from Ohio, that I accurately stated the real issue between these amendments. I do not, of course, believe that any commission that may be selected will be omniscient, neither do I believe that any court is omniscient, neither do I believe that either commission or court can be found entirely free from the possibility of mistake. The Senator from Ohio, however, in lauding the court and in rather disparaging the commission, left the inference that my amendment withdrew all jurisdiction from the court, and I desire at once to point out just what the court would be authorized to do, just what jurisdiction the court would have over the order of the commission under the amendment that I have proposed.

Mr. POMERENE. Mr. President, I certainly did not intend to leave the impression that I was of the opinion that the Senator was trying to exclude the courts from the power to review entirely; by no means.

Mr. CUMMINS. I yield to the Senator from Delaware, if he desires to interrupt me at this point.

Mr. SAULSBURY. Mr. President, I thought just where we were brought by the question of the Senator from Missouri it might be well enough to call the attention of the Senate to the fact that the method proposed by the Senator from Ohio of making the finding and order of the trade commission practically final, to be reviewed only as he will describe, is not the only method in which the orders of the Interstate Commerce Commission are reviewable. There are two methods, one that proposed by the Senator from Iowa and the other in a case where the finding is for the payment of money, in which case there is practically a trial de novo in the district court, and, just as in the case of the amendment of the Senator from Iowa, the order and finding of the commission is made prima facie evidence in the case.

In fact, I think the amendment of the Senator from Ohio goes further than in the other branch of appeals taken from the Interstate Commerce Commission in that the whole record, the transcript of the evidence, and the finding, and the order, are sent up and are all before the court, subject only to such additions as the person against whom the order is made may obtain leave to introduce by way of new evidence which could not be produced at the original trial.

I did not want the Senator from Missouri to understand that the method proposed by the Senator from Iowa was the only way in which any order of the commission could be reviewed.

Mr. CUMMINS. Mr. President, I still insist upon my statement. I know that the interstate-commerce law provides that upon the complaint of a shipper the Interstate Commerce Commission may ascertain whether there has been an overcharge or not, and if it finds there has been, it may determine the amount, and that then the shipper may sue the railroad company in the court, and then the judgment of the Interstate Commerce Commission is prima facie evidence of the amount due. But that has no relevancy or similarity to the question we are now discussing. Whenever the interstate-commerce law clothes the Interstate Commerce Commission with the authority to pass upon the lawfulness of any particular act of a common carrier, then the order of the commission, wherever it is challenged, has a certain effect, and it ought to have a certain effect, or it is idle to create the commission and go through the ceremony of trying a case before it.

I propose to find out just what effect under the interstate-commerce law an order, which is as nearly similar to the orders that are to be made by the trade commission as two human affairs can be, may have in the courts when they are called upon to revise or review the action of the commission.

I repeat, that under the plan of the amendment now pending there is practically a trial de novo.

I desire to call to the attention of the Senate the opinion in the Supreme Court of the United States in the case of the Interstate Commerce Commission against the Illinois Central Railroad. It is reported in Two hundred and fifteenth United States Supreme Court Reports, beginning at page 452. This case originated in a complaint filed against the railroad company charging it with unjust discrimination or undue preference in the distribution of its cars.

I want that to be remembered. The charge was unjust discrimination in the treatment of its patrons in furnishing them the cars necessary to carry on their business. I will not enter into the details of the charge, because its simple statement furnishes all the information that is necessary for the argument I am making.

I pause here a moment to recall some of the criticisms that have been made upon the phrase "unfair competition." The interstate-commerce law, in a part of it that has been enforced for years, declares it to be unlawful for a common carrier to unjustly discriminate. I would like to know whether that statement of the law is more certain or definite than unfair competition. Unjust discrimination. Some discrimination is permitted, but the commission is to determine whether the discrimination is unjust, and I would like to hear some of the ridicule, some of the sneers, and some of the wit that have been expended upon the phrase "unfair competition" expended on "unjust discrimination." I would like to hear some of the critics of this section attempt to define unjust discrimination.

Is there a Senator here, was there ever a writer or a student able to define "unjust discrimination"? No; it can no more be defined than "unfair competition." It can no more be defined than "undue restraint of trade." These phrases are primary. They all embody a principle, and it is nothing less than absurd to insist that in order to satisfy the demands of the law we must be able to define words that contain in themselves the primary meaning sought to be expressed.

I need not pursue that thought further, because it has been commented upon until it has become tiresome to the Senate.

I recall myself to the argument. In the case from which I am reading the complaint filed with the Interstate Commerce Commission was that the Illinois Central Railroad Co. had been guilty of unjust discrimination. The commission proceeded to

the investigation and the trial of that cause, and it rendered a finding against the company. Thereupon the company brought its suit against the Interstate Commerce Commission, as it had a right to do at the time the suit was brought, although it would now, under the act of 1910, I think, be brought against the United States. It brought its suit against the Interstate Commerce Commission to set aside, annul, and cancel the order that had been made by the commission adjudging that the railroad company had been guilty of unjust discrimination in its dealings with the public.

Is there any difference between the finding of unjust discrimination and the finding of unfair competition? Is there any reason why a court should be given a broader jurisdiction or a greater right in reviewing the order of the trade commission, in finding one guilty of unfair competition, than there is for giving the court a similar jurisdiction in reviewing the finding of the interstate commerce tribunal that the defendant had been guilty of unjust discrimination? I can perceive no reason. It is utterly impossible for me to understand that there is a difference between these two cases.

Mr. COLT. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Rhode Island?

Mr. CUMMINS. I yield.

Mr. COLT. The Senator is speaking of unjust discrimination, and I desire to ask if unjust discrimination would not be largely a question of mathematics? For example, if a railroad company charged one customer 2 cents a mile—I am only giving a crude illustration—and another customer 2½ cents, you would have something to guide you, and the question would be whether this difference in charges was just under the circumstances.

Mr. CUMMINS. Where do you get anything to go on?

Mr. COLT. The question under those circumstances would be whether the discrimination was justified.

Mr. CUMMINS. I think so.

Mr. COLT. Now, suppose a case arises involving unfair competition and I want to have the commission determine as to the legality of some of the practices which have been referred to in the decrees of the courts in cases arising under the Sherman Act, upon what principle are you going to determine whether these practices are fair or unfair? I will read a few of these practices:

> From sending out traveling men for the purpose or with instructions to influence the customers of such competitors of either of these defendants, so as to secure the trade of such customers, without regard to the price.
>
> From appointing or authorizing the appointment of any officer, agent, or committee of said Elgin Board of Trade, whether of one or more persons, to fix or suggest the price or prices of butter.
>
> From maintaining a quotation committee or any other committee or agency of said Elgin Board of Trade or its membership which shall fix a price or prices of butter.
>
> From making or causing to be made any offer to buy or sell butter on said Elgin Board of Trade at a price which has been agreed upon by any two or more of the members of said board or by any one or more of said members, and any other person or persons, prior to the making of said offer.

I really think the Senator from Iowa must admit that the phrase "unfair competition" is used in a legal as well as in a colloquial sense, and that its meaning is indefinite, vague, and indeterminate; that the phrase means one thing in the region of morals or good manners, while in the department of law it means quite another thing; at any rate, there being a dispute as to the meaning of this phrase, it does not seem to me fair to put it into a great statute affecting the business of the country.

Mr. CUMMINS. Mr. President——

Mr. COLT. I desire to quote a statement, if the Senator will pardon me, from a very eminent judge:

> To draw a line between fair and unfair competition—

This is in a case, I think, cited by the Senator yesterday—

> To draw a line between fair and unfair competition, between what is reasonable and unreasonable, passes the power of the court. Competition exists when two or more persons seek to possess or to enjoy the same thing; it follows that the success of one must be the failure of another, and no principle of law enables us to interfere with or to moderate that success or that failure so long as it is due to mere competition. I say mere competition, for I do not doubt that it is unlawful and actionable for one man to interfere with another's trade by fraud or misrepresentation, or by molesting his customers, or those who would be his customers, whether by physical obstruction or moral intimidation.

I merely wish to say one word more. The Senator from New Hampshire [Mr. HOLLIS] as well as the Senator from Iowa spoke about the rule of reason.

Mr. CUMMINS. I do not want a reply to the Senator from New Hampshire interjected in my speech.

Mr. COLT. The Senator from Iowa said the other day that the difficulty as to the construction of the phrase "unfair competition" could be solved by the same rule of reason that was applied under the Sherman Act. The difference between the two cases, to my mind, is this: Under the Sherman Act, in applying the rule of reason you have principles to guide you; it is not the absolute reason of the judge; you have a foundation upon which to rest. The issue in these cases is a combination in restraint of trade or an attempt to monopolize, and the facts must tend to prove such a scheme or plan, a scheme or plan by which the defendant undertakes to get control of a certain article of commerce. The injury to the public from these combinations in restraint of trade and attempts to monopolize are enhancement of price, deterioration of the article, and limitation of output, as well as the further injury that the people are restrained from their liberty of trading in this article. That is monopoly in the sense of the Sherman law.

Under the rule of reason, as applied to the Sherman law, you have legal guides and principles to go by, but if a case of "unfair competition" came before the court I would ask how would a judge know what to do in the present condition of uncertainty as to the meaning of those words, and the different definitions which are given to them by the ablest Members in this body?

Mr. CUMMINS. Mr. President, there have been no definitions given of "unfair competition" by anybody, and I hope no one has been or will be adventuresome enough to attempt to give a definition to those words, any more than anyone would attempt to give a definition of "fraud" or "reasonable" or "undue restraint of trade" or "unjust preferences." It is beyond the capacity of man to define any of these phrases, because they define themselves. There is difficulty in their application to a particular state of facts. Men will differ, employing the rule of reason, in their application to a given case. Judges all over the country have differed with regard to the application of the phrase "restraint of trade." One judge has held that a given state of facts constitutes a restraint of trade; another judge, sitting on the same bench, has decided by the same rule of reason that such given state of affairs does not constitute a restraint of trade. There have been scores of instances in which one judge has said that a given practice by a railroad company was an unjust discrimination, and another judge has said that the same practice was not an unjust discrimination. We can not conceive a law that all judges will apply to the same state of affairs in the same way. Possibly when we reach the heavenly shore—and I hope we all will reach it, in the long distant future—we may find that infallibility and unerring judgment that will enable us to reach a like conclusion upon a like state of facts, but we have not as yet attained that perfection.

I did not, however, rise to discuss the meaning of the words "unfair competition"; I rose to ask the attention of the Senate to a most important inquiry relating to the jurisdiction that we should give the courts over the orders of the commission. I have instanced now the character of the case from which I intend to read; and if anyone can perceive any difference in principle between that case and the action of the commission under the law that we are proposing to pass, I have yet to hear it stated.

Mr. WALSH. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Montana?

Mr. CUMMINS. I do.

Mr. WALSH. I rose a few moments ago to address the Senator in relation to the matter to which he has just now arrived. The Senator recognizes, as a matter of course, the very essential difference between declaring existing rates or existing practices unreasonable and prescribing a rule for the future.

Mr. CUMMINS. A very great difference.

Mr. WALSH. The one is a judicial act and the other is a legislative act. To declare that an existing rate is unreasonable is a judicial act; to prescribe a rate which shall govern for the future is a legislative act. That legislative powers may be confined to a commission and its decision made final there can be no question. Now, is it not true that in the case the Senator is now canvassing the court prescribed the rule which should guide the railroad company in the future; and was it not the rule thus laid down to guide the company for the future that was attacked?

Mr. CUMMINS. Not in the sense in which the Senator from Montana uses that phrase. The essential part of the order was to denounce or condemn what had been done by the railroad company.

Mr. WALSH. Mr. President——

Mr. CUMMINS. Just a moment. I want to read from the opinion. On page 470, the court said:

> The statute endowing the commission with large administrative—

Not legislative—

large administrative functions, and generally giving effect to its orders concerning complaints before it without exacting that they be previously submitted to judicial authority for sanction, it becomes necessary to determine the extent of the powers which courts may exert on the subject.

Beyond controversy, in determining whether an order of the commission shall be suspended or set aside, we must consider (a) all relevant questions of constitutional power or right, (b) all pertinent questions as to whether the administrative order—

Not legislative order—

is within the scope of the delegated authority under which it purports to have been made, and (c) a proposition, which we state independently although in its essence it may be contained in the previous one, viz, whether, even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it, in truth, to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. (Postal Telegraph Cable Co. v. Adams, 155 U. S., 688, 698.) Plain as it is that the powers just stated are of the essence of judicial authority, and which therefore may not be curtailed, and whose discharge may not be by us in a proper case avoided, it is equally plain that such perennial powers lend no support whatever to the proposition that we may, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful administrative order upon our conception as to whether the administrative power has been wisely exercised.

Power to make the order and not the mere expediency or wisdom of having made it is the question. While, as we have seen, the court below reasoned that the transportation of coal bought from a mine by the railroad company for its own use, after delivery to it in its coal cars at the tipple, was not commerce, because "commerce under these circumstances ends at the tipple," it yet reasoned that such coal was within the control of the interstate-commerce law to the extent that a regulation compelling its consideration, for the purpose of rating the capacity of a mine as a basis for fixing its pro rata share of cars in times of shortage, would be valid. Because of this reasoning, it is insisted, it appears that the court below but substituted a regulation which it deemed wise for one which it considered the commission had inexpediently adopted, and this upon the assumption by the court that its authority was not limited to determining power. Without intimating an opinion as to the merits of the proposition, we put it aside as irrelevant, since we must decide whether the action of the court below was correct, irrespective of the reasoning by which such action was induced.

I need not pursue this opinion further, because what I have read indicates the definite conclusion of the Supreme Court of the United States with regard to the power of the court over the orders of the Interstate Commerce Commission. This opinion has been followed in at least three cases, and in one of them the matter is reasoned upon and elaborated much more than in the opinion from which I have read, but it is in further application of the rule; and I think it is perfectly well known now among lawyers just what jurisdiction the courts can exert over the orders of the Interstate Commerce Commission, whether they are orders establishing unjust discriminations or orders announcing railroad rates or orders with regard to the application of safety appliances to trains, or in any other respect in which the commission is given authority over common carriers.

All that I suggest is that we follow the same rule with regard to the trade commission and its finding of unfair competition that we have already adopted with regard to the finding of the Interstate Commerce Commission as to unjust discrimination and other unfair or improper practices pursued by a common carrier.

Mr. NEWLANDS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Nevada?

Mr. CUMMINS. I yield.

Mr. NEWLANDS. I wish to ask the Senator from Iowa whether he regards section 5, as reported in this bill by the committee, as providing for any court review; and, if so, to what question that review is confined?

Mr. CUMMINS. Mr. President, I have difficulty in answering that question. My objection to the form of the bill, as it now is, is this: In the latter part of the section it provides that if the corporation does not obey the order of the commission within a time to be fixed, thereupon the commission may apply to the district court of the United States, which shall issue an injunction to enforce the order. If the court should construe that to be a mandate upon it to issue an injunction, without any consideration whatever save the mere presentation, save to inquire as to the existence of the order, I should say that it would be unconstitutional, and would fall. I am not prepared to assert, however, that a court would nullify the statute on that account, for it might well hold that nevertheless the court could exercise all the jurisdiction which it must exercise to fulfill the Constitution. We ought not, however, to take any chances of that kind.

Mr. NEWLANDS. Assuming that it took the latter position, then, that it would have the power to assume such jurisdiction as it must exercise in order to carry out and enforce the Constitution, to what questions, then, would the court be confined, in the judgment of the Senator?

Mr. CUMMINS. Precisely those which I read a moment ago from the opinion of the Supreme Court.

Mr. NEWLANDS. First, as to whether the action was confiscatory?

Mr. CUMMINS. It is, after all, a matter of jurisdiction. If the court should find that upon the conceded facts there was no unfair competition, it would have the right to do it. It can do that, and does that, with the orders of the Interstate Commerce Commission. If it should find that notice had not been given as required by the law, and that therefore the commission had not acquired the right to enter upon the investigation, it would annul the order. If it were to find that the commission acted arbitrarily, without any evidence to warrant its finding, it would annul the order of the commission. If, however, it found that the commission had acquired jurisdiction in the way pointed out by the law, and that there was fair, substantial evidence to sustain the order as to unfair competition, it would not substitute its judgment for that of the commission with respect to the sufficiency of the proof in establishing unfair competition.

Mr. NEWLANDS. But the Senator is of the opinion that if the facts were such as not, in the judgment of the court, to constitute unfair competition, it would deny the writ of injunction? Is that the Senator's position?

Mr. CUMMINS. I think it would have the right to do so under the amendment I have proposed.

Mr. NEWLANDS. I am speaking now of the bill as it stands.

Mr. CUMMINS. It would either deny the injunction or it would declare the law unconstitutional.

Mr. NEWLANDS. Then I ask the Senator whether the corporation has not every protection under the existing provision of the bill?

Mr. CUMMINS. I do not think so, except through that tortuous interpretation to which we ought not to be driven. I think the provision in the bill is much more nearly what the provision should be than the amendment offered by the Senator from Ohio; but we ought to cure the defect that is palpably there, so that we will be in no danger of meeting an overthrow when we reach the courts.

I hope the Senator from Nevada understands just what my position is.

Mr. NEWLANDS. As I understand the Senator, in any event, whether it is a limited court review or a broad court review, the court can determine, first, whether the action of the commission is confiscatory in character and can annul it on that ground; second, whether it was within the limits of its authority, and can annul it upon that ground; third, whether the conceded facts constitute unfair competition, and if, in the judgment of the court, they do not, the court can annul the order or refuse to enforce it?

Mr. CUMMINS. I do not care to affirm the statement of the Senator from Nevada just as he has made it. I do not think the inquiry into confiscation will often arise under the "unfair competition" section.

Mr. NEWLANDS. I do.

Mr. CUMMINS. This is the question that will arise: Does the order of the commission take the property of the complainant without due process of law; does it deny to him some right which he may assert under the Constitution? In the pursuit of those inquiries the court will practically ascertain what has been stated by the Senator from Nevada.

Mr. LIPPITT. I offer an amendment to the pending bill, to be numbered section 5a; also an amendment to the pending bill to be inserted on page 15, after line 3; and I ask that they may be printed and lie on the table.

The PRESIDENT pro tempore. The amendments will lie on the table and be printed.

Mr. POMERENE. In view of the fact that I suggested an amendment striking out a certain paragraph in the amendment which I submitted awhile ago, I ask that the amendment may be reprinted, as modified, for the information of the Senate.

The PRESIDENT pro tempore. The amendment will be reprinted.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed the bill (S. 4628) extending the period of payment under reclamation projects, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 4261) granting pensions and increase of pensions to certain sol-

diers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 4845) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 5207) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors.

The message further announced that the House agrees to the port of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 5446) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 5575) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 5843) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors.

PETITIONS AND MEMORIALS.

Mr. WEEKS presented a resolution of the Chamber of Commerce of Lawrence, Mass., regretting the action taken by the Senate of the United States in delaying the passage of the river and harbor appropriation bill, and favoring action thereon at the present session of Congress; which was ordered to lie on the table.

He also presented petitions of sundry citizens of Blackstone, Fitchburg, North Attleboro, Boston, Fall River, and Haverhill, all in the State of Massachusetts, praying for national prohibition, which were referred to the Committee on the Judiciary.

Mr. JOHNSON presented a petition of the congregation of the Methodist Episcopal Church, of Sanford, Me., praying for national prohibition, which was referred to the Committee on the Judiciary.

He also presented a petition of the Grand Army of the Republic, Department of Maine, praying for the enactment of legislation granting pensions to widows of Civil War veterans who were married since June 27, 1890, which was referred to the Committee on Pensions.

He also presented a petition of the Knox County Board of Underwriters, of Rockland, Me., praying for the enactment of legislation prohibiting the use of mails in connection with the effecting of insurance in companies not authorized to do business in the several States, which was referred to the Committee on Post Offices and Post Roads.

He also presented a petition of Local Branch No. 209, National Association of Civil Service Employees, of Augusta, Me., praying for the enactment of legislation to provide pensions for civil-service employees, which was referred to the Committee on Civil Service and Retrenchment.

Mr. JONES presented telegrams in the nature of petitions from the Commercial Club of Walla Walla, the Commercial Club of Kennewick, and the Chamber of Commerce of Seattle, all in the State of Washington, praying for the passage of the river and harbor bill at this session of Congress, which were ordered to lie on the table.

Mr. OWEN presented petitions of sundry citizens of Oklahoma, praying for national prohibition, which were referred to the Committee on the Judiciary.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. SHAFROTH:

A bill (S. 6179) to pay Edward Booth $200 back bounty; to the Committee on Claims.

A bill (S. 6180) granting an increase of pension to Callie E. Kooken;

A bill (S. 6181) granting a pension to Seraphina Kain; and

A bill (S. 6182) granting an increase of pension to Ellen Milam; to the Committee on Pensions.

By Mr. BRISTOW:

A bill (S. 6183) granting an increase of pension to William Crouch (with accompanying papers);

A bill (S. 6184) granting a pension to Frank Ferris (with accompanying papers);

A bill (S. 6185) granting an increase of pension to Catharine Potter (with accompanying papers);

A bill (S. 6186) granting an increase of pension to James N. Yates (with accompanying papers);

A bill (S. 6187) granting a pension to Mathias Allacher (with accompanying papers);

A bill (S. 6188) granting a pension to Mattie J. Johnson (with accompanying papers); and

A bill (S. 6189) granting an increase of pension to Thomas Jefferson Stafford (with accompanying papers); to the Committee on Pensions.

INTERNATIONAL CONFERENCE ON SOCIAL INSURANCE.

Mr. SUTHERLAND. I desire to introduce a joint resolution, of which I spoke yesterday, because it is necessary that it should be disposed of speedily if it is disposed of at all. I ask that the joint resolution may be referred to the Committee on Foreign Relations.

The joint resolution (S. J. Res. 169) authorizing the President to accept an invitation and to appoint delegates to participate in the International Conference on Social Insurance was read twice by its title and referred to the Committee on Foreign Relations.

RIVER AND HARBOR APPROPRIATIONS.

Mr. JOHNSON submitted an amendment intended to be proposed by him to the river and harbor bill, which was ordered to lie on the table and be printed.

PRESIDENTIAL APPROVAL.

A message from the President of the United States, by Mr. Latta, executive clerk, announced that the President had approved and signed the following act:

On July 30, 1914:

S. 485. An act to amend section 1 of an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911.

EXTENSION OF RECLAMATION PROJECTS.

The PRESIDENT pro tempore laid before the Senate the amendments of the House of Representatives to the bill (S. 4628) extending the period of payment under reclamation projects, and for other purposes.

Mr. SMITH of Arizona. I move that the Senate disagree to the amendments of the House of Representatives, request a conference with the House on the disagreeing votes of the two Houses thereon, the conferees on the part of the Senate to be appointed by the Chair.

The motion was agreed to; and the President pro tempore appointed Mr. SMITH of Arizona, Mr. LANE, and Mr. JONES conferees on the part of the Senate.

PENSIONS AND INCREASE OF PENSIONS.

Mr. JOHNSON submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 4261) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 1, 3, 7, 13, 14, 15, 16, 19, and 20, and agree to the same.

That the House recede from its amendments numbered 2, 4, 5, 6, 8, 9, 10, 11, 12, and 18.

That the Senate recede from its disagreement to the amendment of the House numbered 17, and agree to the same with an amendment as follows: In lieu of the sum proposed by said amendment insert the sum "$36"; and the House agree to the same.

BENJ. F. SHIVELY,
THOMAS STERLING,
Managers on the part of the Senate.

JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.

The report was agreed to.

Mr. JOHNSON submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 4845) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 5, 6, 8, 9, and 14, and agree to the same.

That the House recede from its amendments numbered 1, 2, 3, 4, 7, 10, and 12.

That the Senate recede from its disagreement to the amendment of the House numbered 11, and agree to the same with an amendment as follows: In lieu of the sum proposed by said amendment insert the sum "$40"; and the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 13, and agree to the same with an amendment as follows: In lieu of the sum proposed by said amendment insert the sum "$36"; and the House agree to the same.

BENJ. F. SHIVELY,
THOMAS STERLING,
Managers on the part of the Senate.
JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.

The report was agreed to.

Mr. JOHNSON submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 5207) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 3, 12, 13, 15, 21, and 22, and agree to the same.

That the House recede from its amendments numbered 1, 2, 4, 5, 7, 8, 9, 10, 11, 14, 16, 17, 18, and 19.

That the Senate recede from its disagreement to the amendment of the House numbered 6, and agree to the same with an amendment as follows: Restore the matter stricken out by said amendment, and in lieu of the sum proposed therein insert the sum "$24"; and the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 20, and agree to the same with an amendment as follows: Restore the matter stricken out by said amendment, and in lieu of the sum proposed therein insert the sum "$30"; and the House agree to the same.

BENJAMIN F. SHIVELY,
THOMAS STERLING,
Managers on the part of the Senate.
JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.

The report was agreed to.

Mr. JOHNSON submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 5446) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 1, 4, 6, 7, 9, 12, 14, 15, 16, and 17, and agree to the same.

That the House recede from its amendments numbered 2, 3, 5, 11, 13, and 18.

That the Senate recede from its disagreement to the amendment of the House numbered 8, and agree to the same with an amendment as follows: Restore the matter stricken out by said amendment and in lieu of the sum proposed therein insert the sum "$12"; and the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 10, and agree to the same with an amendment as follows: Restore the matter stricken out by said amendment and in lieu of the sum proposed therein insert the sum "$24"; and the House agree to the same.

BENJAMIN F. SHIVELY,
THOMAS STERLING,
Managers on the part of the Senate.
JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.

The report was agreed to.

Mr. JOHNSON submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 5575) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 3, 4, and 5, and agree to the same.

That the House recede from its amendments numbered 2, 6, 8, 9, 10, 11, and 12.

That the Senate recede from its disagreement to the amendment of the House numbered 1, and agree to the same with an amendment as follows: Restore the matter stricken out by said amendment and in lieu of the sum proposed therein insert the sum "$30"; and the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 7, and agree to the same with an amendment as follows: Restore the matter stricken out by said amendment, and in lieu of the sum proposed therein insert the sum "$20"; and the House agree to the same.

BENJ. F. SHIVELY,
THOMAS STERLING,
Managers on the part of the Senate.
JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.

The report was agreed to.

Mr. JOHNSON submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 5843) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 1, 5, 6, 7, 11, and 15, and agree to the same.

That the House recede from its amendments numbered 2, 3, 4, 8, 9, 10, 13, and 14.

That the Senate recede from its disagreement to the amendment of the House numbered 12, and agree to the same with an amendment as follows: Restore the matter stricken out by said amendment, and in lieu of the sum proposed therein insert the sum "$36"; and the House agree to the same.

BENJAMIN F. SHIVELY,
THOMAS STERLING,
Managers on the part of the Senate.
JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.

The report was agreed to.

EXECUTIVE SESSION.

Mr. KERN. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After 10 minutes spent

in executive session the doors were reopened, and (at 6 o'clock p. m., Thursday, July 30, 1914) the Senate took a recess until to-morrow, Friday, July 31, 1914, at 11 o'clock a. m.

NOMINATIONS.

Executive nominations received by the Senate July 30 (legislative day of July 27), 1914.

PROMOTION IN THE ARMY.

First Lieut. Edgar D. Craft, Medical Corps, to be captain from July 8, 1914, after three years' service.

APPOINTMENTS IN THE PUBLIC HEALTH SERVICE.

Thomas Francis Keating to be assistant surgeon in the Public Health Service. (New office.)

Clarence Henry Waring to be assistant surgeon in the Public Health Service. (New office.)

George Alexander Wheeler to be assistant surgeon in the Public Health Service. (New office.)

Roland Edward Wynne to be assistant surgeon in the Public Health Service. (New office.)

Henry Charles Yarbrough to be assistant surgeon in the Public Health Service. (New office.)

CONFIRMATIONS.

Executive nominations confirmed by the Senate July 30 (legislative day of July 27), 1914.

CONSUL.

John F. Jewell to be consul at Chefoo, China.

COLLECTOR OF INTERNAL REVENUE.

Emanuel J. Doyle to be collector of internal revenue for the fourth district of Michigan.

SECOND ASSISTANT CHIEF OF BUREAU OF FOREIGN AND DOMESTIC COMMERCE.

Frank R. Rutter to be (Second) Assistant Chief of Bureau of Foreign and Domestic Commerce in the Department of Commerce.

POSTMASTERS.

MINNESOTA.

Henry P. Dunn, Brainerd.
John B. Hughes, Lake Benton.
Halvor T. Moland, Buffalo.
Frank Plotts, Blooming Prairie.

NEBRASKA.

John Conroy, Shelton.
George W. Ewing, Nelson.
Edward P. Fitzgerald, Elm Creek.

HOUSE OF REPRESENTATIVES.

THURSDAY, *July 30, 1914.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

We thank Thee, O God our heavenly Father, for this day, with its gracious privileges. Strengthen us, we beseech Thee, that we may be able to discharge its obligations in accordance with Thy will and pleasure. In the spirit of Jesus Christ our Lord. Amen.

The Journal of the proceedings of yesterday was read and approved.

LEAVE OF ABSENCE.

Mr. LEVER, by unanimous consent (at the request of Mr. LEE of Georgia), was granted leave of absence on account of sickness.

LEAVE TO EXTEND REMARKS.

Mr. RAKER. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on the subject of woman suffrage.

The SPEAKER. The gentleman from California [Mr. RAKER] asks unanimous consent to extend his remarks in the RECORD on the subject of woman suffrage. Is there objection?

Mr. GORDON. Mr. Speaker, I object. It is a State question; a State issue.

The SPEAKER. The gentleman from Ohio [Mr. GORDON] objects.

PAYMENT UNDER RECLAMATION PROJECTS.

The SPEAKER. When the House adjourned yesterday it was voting on the Underwood amendment to the bill (S. 4628) extending the period of payment under reclamation projects. There was no quorum present, and that left it hanging up. The Clerk will report the Underwood amendment.

The Clerk read as follows:

Amend, on page 11, by adding, after section 15, a new section, as follows:

"SEC. 16. That from and after July 1, 1915, expenditures shall not be made for carrying out the purposes of the reclamation law except out of appropriations made annually by Congress therefor, and the Secretary of the Interior shall, for the fiscal year 1916 and annually thereafter, in the regular Book of Estimates submit to Congress estimates of the amount of money necessary to be expended for carrying out any or all of the purposes authorized by the reclamation law, including the extension and completion of existing projects and units thereof and the construction of new projects. The annual appropriations made hereunder by Congress for such purposes shall be paid out of the reclamation fund provided for by the reclamation law."

The SPEAKER. The question is on agreeing to the amendment.

The question was taken, and the Speaker announced that the ayes seemed to have it.

Mr. BRYAN. A division, Mr. Speaker.

The SPEAKER. The gentleman from Washington [Mr. BRYAN] demands a division. Those in favor of the amendment will rise and stand until they are counted. [After counting.] Forty-four gentlemen have risen in the affirmative. Those opposed will rise and stand until they are counted. [After counting.] Fifteen gentlemen have risen in the negative.

Mr. BRYAN. Mr. Speaker, I make the point of no quorum.

The SPEAKER. On this vote the ayes are 44 and the noes are 15. The gentleman from Washington [Mr. BRYAN] makes the point of no quorum. The Doorkeeper will close the doors, the Sergeant at Arms will notify the absentees, and the Clerk will call the roll. Those in favor of the Underwood amendment will, when their names are called, vote "yea"; those opposed will vote "nay."

The question was taken; and there were—yeas 178, nays 49, answered "present" 2, not voting 203, as follows:

YEAS—178.

Abercrombie	Dent	Helvering	Peters, Mass.
Adamson	Dickinson	Hensley	Peters, Me.
Alexander	Difenderfer	Hill	Peterson
Allen	Dixon	Holland	Platt
Ansberry	Donohoe	Howard	Plumley
Anthony	Donovan	Hull	Post
Bailey	Doolittle	Humphreys, Miss.	Prouty
Baker	Doremus	Jacoway	Quin
Baltz	Doughton	Johnson, Ky.	Rainey
Barkley	Drukker	Kennedy, Conn.	Reed
Barnhart	Dunn	Kennedy, Iowa	Reilly, Wis.
Bathrick	Eagan	Kennedy, R. I.	Rogers
Beakes	Elder	Kent	Rubey
Blackmon	Esch	Key, Ohio	Rucker
Booher	Farr	Kiess, Pa.	Russell
Bowdle	Fergusson	Kindel	Saunders
Britten	Fess	Kirkpatrick	Scott
Brockson	Finley	Konop	Shackleford
Brodbeck	Flood, Va.	La Follette	Sims
Broussard	Floyd, Ark.	Lee, Ga.	Sisson
Brown, N. Y.	Foster	Lee, Pa.	Smith, Md.
Brumbaugh	Fowler	Lesher	Smith, Saml. W.
Buchanan, Ill.	Gallagher	Lewis, Md.	Sparkman
Buchanan, Tex.	Gallivan	Lieb	Stedman
Burgess	Garner	Linthicum	Stone
Burke, S. Dak.	Garrett, Tenn.	Lloyd	Talcott, N. Y.
Burke, Wis.	Garrett, Tex.	Logue	Tavenner
Burnett	Gilmore	McCoy	Taylor, Ark.
Butler	Godwin, N. C.	McKenzie	Towner
Campbell	Good	Madden	Treadway
Candler, Miss.	Goodwin, Ark.	Maguire, Nebr.	Tribble
Cantor	Gordon	Mahan	Tuttle
Caraway	Goulden	Mann	Underwood
Clark, Fla.	Graham, Ill.	Mapes	Walsh
Claypool	Gray	Mitchell	Watkins
Cline	Greene, Vt.	Montague	Watson
Coady	Gregg	Moon	Webb
Collier	Hamlin	Moss, Ind.	Whaley
Connelly, Kans.	Hardy	Moss, W. Va.	White
Conry	Harris	Mulkey	Wilson, Fla.
Cooper	Harrison	Neely, W. Va.	Wingo
Cox	Haugen	O'Hair	Witherspoon
Cullop	Hay	Oldfield	Woods
Danforth	Heflin	Page, N. C.	
Decker	Helm	Park	

NAYS—49.

Anderson	Hayden	Miller	Stephens, Cal.
Barton	Hayes	Mondell	Stevens, Minn.
Bell, Cal.	Helgesen	Nolan, J. I.	Stevens, N. H.
Bryan	Howell	Norton	Stout
Church	Hulings	Patton, Pa.	Sutherland
Curry	Johnson, Utah	Raker	Taylor, Colo.
Dillon	Johnson, Wash.	Roberts, Nev.	Thomson, Ill.
Evans	Keating	Seldomridge	Volstead
Falconer	Kelly, Pa.	Sells	Woodruff
Ferris	Kinkaid, Nebr.	Sinnott	Young, N. Dak.
French	Lindbergh	Sloan	
Hammond	MacDonald	Smith, Idaho	
Hawley	Manahan	Smith, Minn.	

ANSWERED "PRESENT"—2.

Clancy Guernsey

NOT VOTING—203.

Adair	Fairchild	Lafferty	Reilly, Conn.
Aiken	Faison	Langham	Riordan
Ainey	Fields	Langley	Roberts, Mass.
Ashbrook	Fitzgerald	Lazaro	Rothermel
Aswell	FitzHenry	L'Engle	Rouse
Austin	Fordney	Lenroot	Rupley
Avis	Francis	Lever	Sabath
Barchfeld	Frear	Levy	Scully
Bartholdt	Gard	Lewis, Pa.	Sherley
Bartlett	Gardner	Lindquist	Sherwood
Beall, Tex.	George	Lobeck	Shreve
Bell, Ga.	Gerry	Loft	Slayden
Borchers	Gill	Lonergan	Slemp
Borland	Gillett	McAndrews	Small
Brown, W. Va.	Gittins	McClellan	Smith, J. M. C.
Browne, Wis.	Glass	McGillicuddy	Smith, N. Y.
Browning	Goeke	McGuire, Okla.	Smith, Tex.
Bruckner	Goldfogle	McKellar	Stafford
Bulkley	Gorman	McLaughlin	Stanley
Burke, Pa.	Graham, Pa.	Maher	Steenerson
Byrnes, S. C.	Green, Iowa	Martin	Stephens, Miss.
Byrns, Tenn.	Greene, Mass.	Merritt	Stephens, Nebr.
Calder	Griest	Metz	Stephens, Tex.
Callaway	Griffin	Moore	Stringer
Cantrill	Gudger	Morgan, La.	Sumners
Carew	Hamill	Morgan, Okla.	Switzer
Carlin	Hamilton, Mich.	Morin	Taggart
Carr	Hamilton, N. Y.	Morrison	Talbott, Md.
Carter	Hardwick	Mott	Taylor, Ala.
Cary	Hart	Murdock	Taylor, N. Y.
Casey	Henry	Murray, Mass.	Temple
Chandler, N. Y.	Hinds	Murray, Okla.	Ten Eyck
Connolly, Iowa	Hinebaugh	Neeley, Kans.	Thacher
Copley	Hobson	Nelson	Thomas
Covington	Houston	O'Brien	Thompson, Okla.
Cramton	Hoxworth	Oglesby	Townsend
Crisp	Hughes, Ga.	O'Leary	Underhill
Crosser	Hughes, W. Va.	O'Shaunessy	Vare
Dale	Humphrey, Wash.	Padgett	Vaughan
Davenport	Igoe	Paige, Mass.	Vollmer
Davis	Johnson, S. C.	Palmer	Walker
Deitrick	Jones	Parker	Wallin
Dershem	Kahn	Patten, N. Y.	Walters
Dies	Keister	Payne	Weaver
Dooling	Kelley, Mich.	Phelan	Whitacre
Driscoll	Kettner	Porter	Williams
Dupré	Kinkead, N. J.	Pou	Willis
Eagle	Kitchin	Powers	Wilson, N. Y.
Edmonds	Knowland, J. R.	Ragsdale	Winslow
Edwards	Korbly	Rauch	Young, Tex.
Estopinal	Kreider	Rayburn	

So the amendment of Mr. UNDERWOOD was agreed to.

The Clerk announced the following pairs:

For the session:

Mr. SCULLY with Mr. BROWNING.

Mr. GLASS with Mr. SLEMP.

Mr. METZ with Mr. WALLIN.

Until further notice:

Mr. TAYLOR of Alabama with Mr. HUGHES of West Virginia.

Mr. DALE with Mr. MARTIN.

Mr. SHERLEY with Mr. GILLETT.

Mr. ASHBROOK with Mr. AUSTIN.

Mr. BARTLETT with Mr. AVIS.

Mr. DAVENPORT with Mr. J. M. C. SMITH.

Mr. CANTRILL with Mr. COPLEY.

Mr. HOUSTON with Mr. LANGHAM.

Mr. CLANCY with Mr. HAMILTON of New York.

Mr. MCGILLICUDDY with Mr. GUERNSEY.

Mr. SLAYDEN with Mr. BURKE of Pennsylvania.

Mr. HENRY with Mr. HINDS.

Mr. FAISON with Mr. GREENE of Massachusetts.

Mr. PADGETT with Mr. MORIN.

Mr. MORGAN of Louisiana with Mr. LINDQUIST.

Mr. EDWARDS with Mr. GRIEST.

Mr. WEAVER with Mr. WALTERS.

Mr. BELL of Georgia with Mr. CALDER.

Mr. ESTOPINAL with Mr. FREAR.

Mr. KITCHEN with Mr. ROBERTS of Massachusetts.

Mr. SABATH with Mr. SWITZER.

Mr. LOBECK with Mr. POWERS.

Mr. GORMAN with Mr. MCLAUGHLIN.

Mr. LAZARO with Mr. PARKER.

Mr. ASWELL with Mr. CARY.

Mr. CALLAWAY with Mr. WILLIS.

Mr. THOMAS with Mr. FAIRCHILD.

Mr. HUGHES of Georgia with Mr. MERRITT.

Mr. HARDWICK with Mr. J. R. KNOWLAND.

Mr. YOUNG of Texas with Mr. AINEY.

Mr. STEPHENS of Nebraska with Mr. LEWIS of Pennsylvania.

Mr. STEPHENS of Texas with Mr. BARTHOLDT.

Mr. FIELDS with Mr. LANGLEY.

Mr. SHERWOOD with Mr. MOTT.

Mr. WILLIAMS with Mr. WINSLOW.

Mr. UNDERHILL with Mr. STEENERSON.

Mr. ADAIR with Mr. BROWNE of Wisconsin.

Mr. AIKEN with Mr. CARY.

Mr. BYRNES of South Carolina with Mr. SHREVE.

Mr. BYRNS of Tennessee with Mr. BARCHFELD.

Mr. CARTER with Mr. DAVIS.

Mr. DUPRÉ with Mr. CRAMTON.

Mr. FITZGERALD with Mr. KAHN.

Mr. FRANCIS with Mr. CHANDLER of New York.

Mr. GOEKE with Mr. EDMONDS.

Mr. IGOE with Mr. GREEN of Iowa.

Mr. LEVER with Mr. KELLEY of Michigan.

Mr. MCANDREWS with Mr. KREIDER.

Mr. MCKELLAR with Mr. MCGUIRE of Oklahoma.

Mr. POU with Mr. NELSON.

Mr. RAUCH with Mr. PAIGE of Massachusetts.

Mr. PALMER with Mr. MOORE.

Mr. ROUSE with Mr. PORTER.

Mr. SMALL with Mr. VARE.

Mr. SMITH of Texas with Mr. TEMPLE.

Mr. TALBOTT of Maryland with Mr. PAYNE.

Mr. JOHNSON of South Carolina with Mr. KEISTER.

Mr. TAGGART with Mr. FORDNEY.

On this vote:

Mr. MORRISON (for the Underwood amendment) with Mr. HUMPHREY of Washington (against).

The result of the vote was announced as above recorded.

The SPEAKER. A quorum is present. The Doorkeeper will unlock the doors. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was accordingly read the third time.

Mr. MANN. Mr. Speaker, I offer a motion to recommit with instructions.

The SPEAKER. The gentleman from Illinois [Mr. MANN] offers a motion to recommit which the Clerk will report.

The Clerk read as follows:

Mr. MANN moves to recommit the bill S. 4628 to the Committee on Irrigation of Arid Lands, with instructions to that committee to report the said bill back to the House forthwith, with the following amendments, to wit:

"Strike out all of section 1 after the enacting clause down to and including line 16, page 2, and insert in lieu thereof the following:

"'That any person whose lands hereafter become subject to the terms and conditions of the act approved June 17, 1902, entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," and acts amendatory thereof or supplementary thereto, hereafter to be referred to as the reclamation law, and any person who hereafter makes entry thereunder shall at the time of making water-right application or entry, as the case may be, pay into the reclamation fund 5 per cent of the construction charge fixed for his land as an initial installment, and shall pay the balance of the principal of said charge in 35 annual installments, the first 10 of which shall each be 2 per cent of the construction charge and the remaining 25 shall each be 3 per cent until the whole amount shall have been paid. In addition to the principal of the construction charge, there shall be paid in each case annually interest upon the balance of the construction charge remaining unpaid from time to time at the rate of 3 per cent per annum. The first of the said annual installments shall become due and payable on December 1 of the fifth calendar year after the initial installment: *Provided*, That any water-right applicant or entryman may, if he so elects, pay the whole or any part of the construction charges owing by him within any shorter period: *Provided further*. That entry may be made whenever water is available, as announced by the Secretary of the Interior, and the initial payment be made when the charge per acre is established.'

"Strike out section 2 and insert in lieu thereof the following:

"'SEC. 2. That any person whose land or entry has heretofore become subject to the terms and conditions of the reclamation law shall pay the principal of the construction charge, or the portion of the principal of the construction charge remaining unpaid, in 40 annual installments, the first of which shall become due and payable on December 1 of the year in which the public notice affecting his land is issued under this act, and subsequent installments on December 1 of each year thereafter. The first 10 of such installments shall each be 1 per cent and the remaining 30 installments shall each be 3 per cent of the total construction charge, or the portion of the construction charge unpaid at the beginning of such installments: *Provided*, That, in addition to the principal of the construction charge, there shall be paid in each case annually interest at the rate of 3 per cent per annum upon such portion of the balance of the construction charge as remains unpaid beyond the time or times fixed for the payment thereof under the reclamation law in force when such land or entry became subject to the terms and conditions of such reclamation law: *Provided further*, That such person may, if he so elects, pay the whole or any part of the construction charge owing by him prior to the time herein required.'"

Mr. TAYLOR of Colorado. Mr. Speaker, I move the previous question on the motion to recommit.

The previous question was ordered.

The SPEAKER. The question is on the motion to recommit.

The question being taken, the Speaker announced that the noes appeared to have it.

Mr. MANN. Mr. Speaker, I ask for the yeas and nays.

The SPEAKER. The gentleman from Illinois demands the yeas and nays. Those in favor of ordering the yeas and nays will rise and stand until they are counted. [After counting.] Forty-eight Members rising to second the demand.

Mr. MANN. If there is any question about it, I ask for the other side.

The SPEAKER. The Chair was just figuring to see whether 48 was a sufficient number. Those opposed to ordering the yeas and nays will rise and stand until they are counted. [After counting.] One hundred and nine in the negative. Forty-eight being more than one-fifth of those voting, the yeas and nays are ordered. The question is on the motion of the gentleman from Illinois [Mr. MANN] to recommit with instructions.

The question was taken; and there were—yeas 81, nays 140, answered "present" 2, not voting 209, as follows:

YEAS—81.

Anderson	Dunn	Konop	Rainey
Bailey	Eagan	Lewis, Md.	Reilly, Wis.
Baltz	Esch	McCoy	Rogers
Bathrick	Fess	McKellar	Saunders
Beakes	Flood, Va.	McKenzie	Sells
Borchers	Foster	Madden	Sisson
Bowdle	Gallagher	Manahan	Smith, Minn.
Britten	Garrett, Tenn.	Mann	Smith, Saml. W.
Brockson	Good	Mapes	Stevens, N. H.
Buchanan, Tex.	Gordon	Moon	Talcott, N. Y.
Burgess	Gray	Moss, Ind.	Tavenner
Burnett	Greene, Vt.	O'Hair	Thomson, Ill.
Butler	Hardy	Page, N. C.	Townsend
Candler, Miss.	Haugen	Park	Treadway
Cantor	Hay	Patton, Pa.	Tribble
Conry	Holland	Peters, Mass.	Watson
Covington	Hull	Peters, Me.	Webb
Cox	Johnson, Ky.	Platt	Witherspoon
Danforth	Kennedy, Iowa	Plumley	
Doughton	Kennedy, R. I.	Prouty	
Drukker	Kent	Quin	

NAYS—140.

Abercrombie	Difenderfer	Hensley	Post
Adamson	Dillon	Hill	Raker
Alexander	Dixon	Howard	Reed
Allen	Donohoe	Howell	Roberts, Nev.
Ansberry	Donovan	Hulings	Rubey
Anthony	Doolittle	Humphreys, Miss.	Rucker
Baker	Doremus	Jacoway	Russell
Barkley	Elder	Johnson, Utah	Scott
Barnhart	Evans	Johnson, Wash.	Seldomridge
Barton	Falconer	Keating	Shackleford
Bell, Cal.	Farr	Kelly, Pa.	Sims
Blackmon	Fergusson	Kennedy, Conn.	Sinnott
Booher	Ferris	Key, Ohio	Sloan
Brodbeck	Floyd, Ark.	Kindel	Smith, Idaho
Broussard	Fowler	Kinkaid, Nebr.	Smith, Md.
Brown, N. Y.	French	Kirkpatrick	Sparkman
Bryan	Gallivan	La Follette	Stedman
Buchanan, Ill.	Garner	Lee, Pa.	Stephens, Cal.
Burke, S. Dak.	Garrett, Tex.	Lesher	Stevens, Minn.
Burke, Wis.	Gilmore	Lieb	Stone
Campbell	Godwin, N. C.	Lindbergh	Stout
Caraway	Goodwin, Ark.	Linthicum	Sutherland
Church	Goulden	Lloyd	Taylor, Ark.
Clark, Fla.	Graham, Ill.	Logue	Taylor, Colo.
Claypool	Hamlin	MacDonald	Towner
Cline	Hammond	Maguire, Nebr.	Underwood
Coady	Harris	Mahan	Volstead
Collier	Harrison	Mitchell	Watkins
Connelly, Kans.	Hawley	Mondell	Whaley
Cooper	Hayden	Montague	White
Cullop	Hayes	Morgan, Okla.	Wilson, Fla.
Curry	Heflin	Mulkey	Wingo
Decker	Helgesen	Nolan, J. I.	Woodruff
Dent	Helm	Oldfield	Woods
Dickinson	Helvering	Peterson	Young, N. Dak.

ANSWERED "PRESENT"—2.

Guernsey	Morrison

NOT VOTING—209.

Adair	Chandler, N. Y.	George	Johnson, S. C.
Aiken	Clancy	Gerry	Jones
Ainey	Connolly, Iowa	Gill	Kahn
Ashbrook	Copley	Gillett	Keister
Aswell	Cramton	Gittins	Kelley, Mich.
Austin	Crisp	Glass	Kettner
Avis	Crosser	Goeke	Kiess, Pa.
Barchfeld	Dale	Goldfogle	Kinkead, N. J.
Bartholdt	Davenport	Gorman	Kitchin
Bartlett	Davis	Graham, Pa.	Knowland, J., R.
Beall, Tex.	Deitrick	Green, Iowa	Korbly
Bell, Ga.	Dershem	Greene, Mass.	Kreider
Borland	Dies	Gregg	Lafferty
Brown, W. Va.	Dooling	Griest	Langham
Browne, Wis.	Driscoll	Griffin	Langley
Browning	Dupré	Gudger	Lazaro
Bruckner	Eagle	Hamill	Lee, Ga.
Brumbaugh	Edmonds	Hamilton, Mich.	L'Engle
Bulkley	Edwards	Hamilton, N. Y.	Lenroot
Burke, Pa.	Estopinal	Hardwick	Lever
Byrnes, S. C.	Fairchild	Hart	Levy
Byrns, Tenn.	Faison	Henry	Lewis, Pa.
Calder	Fields	Hinds	Lindquist
Callaway	Finley	Hinebaugh	Lobeck
Cantrill	Fitzgerald	Hobson	Loft
Carew	FitzHenry	Houston	Lonergan
Carlin	Fordney	Hoxworth	McAndrews
Carr	Francis	Hughes, Ga.	McClellan
Carter	Frear	Hughes, W. Va.	McGillicuddy
Cary	Gard	Humphrey, Wash.	McGuire, Okla.
Casey	Gardner	Igoe	McLaughlin
Maher	Paige, Mass.	Shreve	Thacher
Martin	Palmer	Slayden	Thomas
Merritt	Parker	Slemp	Thompson, Okla.
Metz	Patten, N. Y.	Small	Tuttle
Miller	Payne	Smith, J. M. C.	Underhill
Moore	Phelan	Smith, N. Y.	Vare
Morgan, La.	Porter	Smith, Tex.	Vaughan
Morin	Pou	Stafford	Vollmer
Moss, W. Va.	Powers	Stanley	Walker
Mott	Ragsdale	Steenerson	Wallin
Murdock	Rauch	Stephens, Miss.	Walsh
Murray, Mass.	Rayburn	Stephens, Nebr.	Walters
Murray, Okla.	Reilly, Conn.	Stephens, Tex.	Weaver
Neeley, Kans.	Riordan	Stringer	Whitacre
Neely, W. Va.	Roberts, Mass.	Sumners	Williams
Nelson	Rothermel	Switzer	Willis
Norton	Rouse	Taggart	Wilson, N. Y.
O'Brien	Rupley	Talbott, Md.	Winslow
Oglesby	Sabath	Taylor, Ala.	Young, Tex.
O'Leary	Scully	Taylor, N. Y.	
O'Shaunessy	Sherley	Temple	
Padgett	Sherwood	Ten Eyck	

So the motion to recommit was lost.

The following additional pairs were announced:

Until further notice:

Mr. BRUCKNER with Mr. NORTON.

Mr. FINLEY with Mr. MILLER.

Mr. DEITRICK with Mr. KIESS of Pennsylvania.

Mr. GRIFFIN with Mr. HAMILTON of New York.

On this vote:

Mr. AVIS (for motion to recommit) with Mr. CLANCY (against).

Mr. MORRISON (for motion to recommit) with Mr. HUMPHREY of Washington (against).

Mr. WALSH. Mr. Speaker, I would like to vote.

The SPEAKER. Was the gentleman in the Hall listening when his name should have been called?

Mr. WALSH. No; I was not.

The SPEAKER. The gentleman does not qualify himself.

Mr. WALSH. I would have voted "aye," if I could.

The result of the vote was then announced as above recorded.

The SPEAKER. The question now is on the passage of the bill.

The question was taken, and the bill was passed.

On motion of Mr. TAYLOR of Colorado, a motion to reconsider the vote whereby the bill was passed was laid on the table.

PENSIONS.

Mr. RUSSELL. Mr. Speaker, I call up the conference reports on the several bills, S. 5843, S. 5575, S. 5446, S. 4845, S. 4261, and S. 5207.

The SPEAKER. The Clerk will read the first report.

The Clerk read as follows:

CONFERENCE REPORT (NO. 1048).

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 5843) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 1, 5, 6, 7, 11, and 15, and agree to the same.

That the House recede from its amendments numbered 2, 3, 4, 8, 9, 10, 13, and 14.

Amendment numbered 12: That the Senate recede from its disagreement to the amendment of the House numbered 12, and agree to the same with an amendment as follows: Restore the matter stricken out by said amendment and in lieu of the sum proposed therein insert the sum "$36"; and the House agree to the same.

JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.

BENJ. F. SHIVELY,
THOMAS STERLING,
Managers on the part of the Senate.

STATEMENT.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on certain amendments of the House to the bill (S. 5843) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, submit the following written statement in explanation of the effect of the action agreed upon by the con-

ference committee and submitted in the accompanying conference report as to each of the said amendments, viz:

On amendment No. 1: The Senate concurs in the House amendment, on account of soldier's short service and the fact that he has some income aside from his pension.

On amendment No. 2: The House recedes, as the evidence filed in support of the bill shows that the widow is in ill health and is unable to earn a living, and has practically no income outside of her pension; that her husband served more than three years in the Civil War and at his discharge was holding the rank of captain. The claim is a meritorious one, and the proposed increase from $12 to $20 fully justified.

On amendment No. 3: The House recedes, as the evidence filed justifies the allowance of the proposed pension of $12 per month to soldier.

On amendment No. 4: The House recedes, as the evidence filed in support of the bill shows that soldier's death was due to his service, and the proposed pension is fully justified.

On amendment No. 5: The Senate concurs in the House amendment, as the evidence fails to justify the allowance of proposed increase of pension from $12 to $20.

On amendment No. 6: The Senate concurs in the House amendment, as proposed increase of pension from $13 to $24 is not warranted by the evidence on file.

On amendment No. 7: The Senate concurs in the House amendment, as proposed increase of pension from $12 to $20 is not warranted by the evidence on file.

On amendment No. 8: The House recedes, as soldier is shown by additional evidence filed to be almost blind and practically helpless and the owner of no real estate or property of any kind.

On amendment No. 9: The House recedes, as the circumstances disclosed by the evidence on file in support of this bill fully justify the allowance of proposed pension of $12.

On amendment No. 10: The House recedes, as the evidence in the case clearly shows that proposed pension of $12 should be allowed.

On amendment No. 11: The Senate concurs in the House amendment, as the evidence is not deemed sufficient to warrant proposed increase.

On amendment No. 12: The Senate concurs in the House amendment with an amendment allowing widow a pension of $36 per month. The Senate passed this bill at $40. The House struck the item from the bill. The widow is now pensioned at $30. The conferees believe the evidence filed in support of this bill fully justifies an allowance of $36 per month.

On amendment No. 13: The House recedes, as the evidence filed in support of this measure warrants the allowance to the widow of proposed pension of $12.

On amendment No. 14: The House recedes, as the proposed pension of $12 to widow is fully justified by the evidence on file.

Amendment No. 15 is a typographical correction.

JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.

The SPEAKER. The question is on the conference report.

The conference report was agreed to.

The SPEAKER. The Clerk will report the next bill.

The Clerk read as follows:

CONFERENCE REPORT (NO. 1047).

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 5575) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 3, 4, and 5, and agree to the same.

That the House recede from its amendments numbered 2, 6, 8, 9, 10, 11, and 12.

Amendment numbered 1: That the Senate recede from its disagreement to the amendment of the House numbered 1, and agree to the same with an amendment as follows: Restore the matter stricken out by said amendment, and in lieu of the sum proposed therein insert the sum "$30"; and the House agree to the same.

Amendment numbered 7: That the Senate recede from its disagreement to the amendment of the House numbered 7, and agree to the same with an amendment as follows: Restore the matter stricken out by said amendment, and in lieu of the sum proposed therein insert the sum "$20"; and the House agree to the same.

JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.
BENJ. F. SHIVELY,
THOMAS STERLING,
Managers on the part of the Senate.

STATEMENT.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on certain amendments of the House to the bill (S. 5575) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, submit the following written statement in explanation of the effect of the action agreed upon by the conference committee and submitted in the accompanying conference report as to each of the said amendments, viz:

On amendment No. 1: The Senate concurs in the House amendment with an amendment at $30, as the facts in the case presented by the proof are not deemed sufficient to warrant an increase above said amount.

On amendment No. 2: The House recedes, as the proof filed in support of the bill clearly shows that the proposed increase to $20 is justified.

On amendment No. 3: The Senate concurs in the House amendment of $24 per month, as the proofs do not justify a higher rate.

On amendment No. 4: The Senate concurs in the House amendment, as the facts presented by the proof are not deemed sufficient to warrant the proposed increase from $12 to $20.

On amendment No. 5: The Senate concurs in the House amendment, as the proofs on the file do not bring the case within the rules of the committee relating to widows who married Civil War soldiers subsequent to the act of June 27, 1890.

On amendment No. 6: The House recedes, as the proofs filed in support of the bill show that soldier's death was due to his service and that the pension of $12 is fully justified.

On amendment No. 7: The Senate concurs in the House amendment with an amendment allowing widow $20. This is to conform with the rule of the committee.

On amendment No. 8: The House recedes, as the evidence on file shows this claim to be meritorious.

On amendment No. 9: The House recedes, as the claimant is blind and the evidence fully justifies the allowance of the proposed pension of $12.

On amendment No. 10: The House recedes, as the evidence presented in support of the bill warrants the allowance of proposed pension of $12.

On amendment No. 11: The House recedes, as the evidence on file in support of this bill justifies proposed increase from $12 to $20.

On amendment No. 12: The House recedes, as the evidence filed in support of this measure fully justifies the allowance of the proposed pension of $12 per month.

JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.

The conference report was agreed to.

The SPEAKER. The Clerk will read the report on the next bill.

The Clerk read as follows:

CONFERENCE REPORT (NO. 1046).

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 5446) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 1, 4, 6, 7, 9, 12, 14, 15, 16, and 17, and agree to the same.

That the House recede from its amendments numbered 2, 3, 5, 11, 13, and 18.

Amendment numbered 8: That the Senate recede from its disagreement to the amendment of the House numbered 8, and

agree to the same with an amendment as follows: Restore the matter stricken out by said amendment, and in lieu of the sum proposed therein insert the sum "$12"; and the House agree to the same.

Amendment numbered 10: That the Senate recede from its disagreement to the amendment of the House numbered 10, and agree to the same with an amendment as follows: Restore the matter stricken out by said amendment, and in lieu of the sum proposed therein insert the sum "$24"; and the House agree to the same.

JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.
BENJ. F. SHIVELY,
THOMAS STERLING,
Managers on the part of the Senate.

STATEMENT.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on certain amendments of the House to the bill (S. 5446) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, submit the following written statement in explanation of the effect of the action agreed upon by the conference committee and submitted in the accompanying conference report as to each of the said amendments, viz:

On amendment No. 1: The Senate concurs in the House amendment, as widow was not the wife of soldier during his service and the facts in the case do not seem to warrant an increase of her pension from $30 to $40 proposed by the bill.

On amendment No. 2: The House recedes, as it is shown by the evidence that soldier is suffering from paralysis, is totally blind in one eye and almost helpless, that he is without income, and unable to work.

On amendment No. 3: The House recedes, as the proofs show that soldier is suffering from paralysis and requires the aid and attention of another person.

On amendment No. 4: The Senate concurs in the House amendment, as the facts presented by the proof in the case do not seem to justify proposed pension.

On amendment No. 5: The House recedes, as proposed increase of pension is fully justified by the proof on file.

On amendment No. 6: The Senate concurs in the House amendment, as the proposed increase of pension does not seem to be justified by the evidence presented.

On amendment No. 7: The Senate concurs in the House amendment, as the proposed increase of widow's pension from $12 to $20 does not seem to be justified by the evidence on file.

On amendment No. 8: The Senate concurs in the House amendment with an amendment allowing widow $12 per month. The conferees believe the facts in this case fully justify the allowance of the pension of $12 to widow.

On amendment No. 9: The Senate concurs in the House amendment, as the facts presented by the proofs do not seem to justify proposed increase.

On amendment No. 10: The Senate concurs in the House amendment with an amendment allowing soldier $24 per month pension. The Senate passed this bill at $30; the House struck the item from the bill. As soldier served more than one year in the Civil War and is shown by the files in the Bureau of Pensions to be suffering from rheumatism, disease of the heart, enlarged prostate, and double inguinal hernia, and to be totally disabled and prevented from performing manual labor, and is now past 74 years of age, without any property or income other than his pension, the conferees believe a rating of $24 per month is fully justified.

On amendment No. 11: The House recedes, as the proof on file in support of the bill show that claimant is crippled and is in such enfeebled condition that she needs the aid and attention of another person and that she has no income and is dependent largely upon contributions from charitable friends for her support. The case is a meritorious one and the allowance of the proposed pension of $12 is fully justified.

On amendment No. 12: The Senate concurs in the House amendment, as soldier is dead.

On amendment No. 13: The House recedes, as it is shown by proofs on file that soldier is old and totally disabled and wholly incapacitated for the performance of any kind of labor, and by reason thereof is obliged to have a personal attendant most of the time. He has no property or income other than his pension for the support of himself and wife, and the proposed increase of his pension to $30 per month is fully justified.

On amendment No. 14: The Senate concurs in the House amendment, as the facts presented by the proofs are not deemed sufficient to warrant proposed increase.

On amendment No. 15: The Senate concurs in the House amendment, as the proof does not justify an increase of soldier's pension to more than $24.

On amendment No. 16: The Senate concurs in the House amendment, as the facts in the case do not warrant a rating above $30.

On amendment No. 17: The Senate concurs in the House amendment, as the proposed increase from $12 to $20 is not justified by the proof on file.

On amendment No. 18: The House recedes, as the facts in the case fully justify the allowance of $30 to soldier.

JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.

The conference report was agreed to.

The SPEAKER. The Clerk will read the next conference report.

The Clerk read as follows:

CONFERENCE REPORT (NO. 1044).

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 4845) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 5, 6, 8, 9, and 14, and agree to the same.

That the House recede from its amendments numbered 1, 2, 3, 4, 7, 10, and 12.

Amendment numbered 11: That the Senate recede from its disagreement to the amendment of the House numbered 11, and agree to the same with an amendment as follows: In lieu of the sum proposed by said amendment insert the sum "$40"; and the House agree to the same.

Amendment numbered 13: That the Senate recede from its disagreement to the amendment of the House numbered 13, and agree to the same with an amendment as follows: In lieu of the sum proposed by said amendment insert the sum "$36"; and the House agree to the same.

JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.
BENJ. F. SHIVELY,
THOMAS STERLING,
Managers on the part of the Senate.

STATEMENT.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on certain amendments of the House to the bill (S. 4845) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, submit the following written statement in explanation of the effect of the action agreed upon by the conference committee and submitted in the accompanying conference report as to each of the said amendments, viz:

On amendment No. 1: The House recedes, as the evidence on file with the bill shows that the widow is entitled to the proposed increase.

On amendment No. 2: The House recedes, as the proofs on file in support of the bill disclose that soldier is clearly entitled to the $50 proposed.

On amendment No. 3: The House recedes, as the facts in the case justify the allowance of proposed pension of $12 to widow.

On amendment No. 4: The House recedes, as the evidence on file shows that soldier is almost blind and practically helpless and requires the care and assistance of another person, and that he is without property or income of any kind except his pension.

On amendment No. 5: The Senate concurs in the House amendment, on account of soldier's short service.

On amendment No. 6: The Senate concurs in the House amendment, as the soldier is dead.

On amendment No. 7: The House recedes, as the proofs on file disclose that the proposed pension of $12 to widow is fully justified.

On amendment No. 8: The Senate concurs in the House amendment, on account of soldier's short service and because he is an inmate of the Soldiers' Home.

On amendment No. 9: The Senate concurs in the House amendment, as additional proofs filed show the proposed pension of $45 to be fully justified.

On amendment No. 10: The House recedes, as the evidence on file in support of this measure shows that the proposed pension should be allowed.

On amendment No. 11: The Senate concurs in the House amendment with an amendment allowing $40 per month to widow. The Senate had passed the bill at $50 and the House reduced this to $30. The conferees believe that $40 per month is fully justified by the proofs on file.

On amendment No. 12: The House recedes, as the proofs show that soldier is totally disabled and entirely unable to perform manual labor for his support and has no income other than his pension.

On amendment No. 13: The Senate concurs in the House amendment with an amendment allowing widow $36 per month. The Senate had passed the bill at $50, which amount was reduced by the House to $24. The conferees believe that the facts in the case fully justify an allowance of $36 to widow.

On amendment No. 14: The Senate concurs in the House amendment, as the soldier is dead.

JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.

The conference report was agreed to.

The SPEAKER. The Clerk will read the next report.

The Clerk read as follows:

CONFERENCE REPORT (NO. 1043).

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 4261) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 1, 3, 7, 13, 14, 15, 16, 19, and 20, and agree to the same.

That the House recede from its amendments numbered 2, 4, 5, 6, 8, 9, 10, 11, 12, and 18.

Amendment numbered 17: That the Senate recede from its disagreement to the amendment of the House numbered 17, and agree to the same with an amendment as follows: In lieu of the sum proposed by said amendment insert the sum "$36"; and the House agree to the same.

JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House,
BENJ. F. SHIVELY,
THOMAS STERLING,
Managers on the part of the Senate.

STATEMENT.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on certain amendments of the House to the bill (S. 4261) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, submit the following written statement in explanation of the effect of the action agreed upon by the conference committee and submitted in the accompanying conference report as to each of the said amendments, viz:

On amendment No. 1: The Senate concurs in the House amendment, as soldier is dead.

On amendment No. 2: The House recedes from its amendment, as soldier is shown by evidence on file to be totally disabled and to have no income excepting his pension.

On amendment No. 3: The Senate concurs in the House amendment, as the evidence on file in the case shows that the amount of property owned by the beneficiary does not justify special legislation in her behalf.

On amendment No. 4: The House recedes, as the evidence on file in support of this bill fully warrants the increase proposed.

On amendment No. 5: The House recedes, as the evidence in support of the bill shows that soldier requires the aid and assistance of another person for his care, while for the past three months he has been confined to his room. He has no income other than his pension.

On amendment No. 6: The House recedes, as the proof on file in support of this measure discloses that soldier is totally disabled and has no income other than his pension.

On amendment No. 7: The Senate concurs in the House amendment, as the beneficiary is dead.

On amendment No. 8: The House recedes, as the proof filed in the case shows conclusively that the amount allowed by the Senate is justified.

On amendment No. 9: The House recedes, as the evidence on file in this case shows that soldier is totally disabled and has no income other than his pension.

On amendment No. 10: The House recedes, as it is shown by the proof on file in support of this bill that while soldier only had 86 days actual service, from the time he was enlisted until the time he was discharged 92 days had elapsed, and the proposed pension is justified.

On amendment No. 11: The House recedes, as additional proof presented in support of the bill shows that soldier has no income other than his pension and that he is totally disabled, and the amount proposed by the bill is fully justified.

On amendment No. 12: The House recedes, as the evidence on file clearly shows that proposed pension of $12 per month is justified.

On amendment No. 13: The Senate concurs in the House amendment, on account of the short service of soldier.

On amendment No. 14: The Senate concurs in the House amendment, as the statement as to claimant's financial condition is not considered sufficient to bring the case within the rules of the committees of both Houses as to destitution.

On amendment No. 15: The Senate concurs in the House amendment to reduce the amount from $30 to $24 per month, as the evidence on file does not warrant a higher rate.

On amendment No. 16: The Senate concurs in the House amendment, as the facts in the case presented by the proofs do not justify special legislation for claimant.

On amendment No. 17: The Senate concurs in the House amendment, with an amendment allowing $36 per month pension to the widow. The Senate proposed an allowance of $50 per month, which was reduced by the House to $24 per month. The conferees believe the evidence on file fully justifies the proposed allowance of $36.

On amendment No. 18: The House recedes, as additional evidence filed with the committee clearly shows that proposed pension of $30 is fully justified by the facts in the case.

On amendment No. 19: The Senate concurs in the House amendment, as soldier is dead.

On amendment No. 20: The Senate concurs in the House amendment, as the evidence shows that the widow is not in destitute circumstances and that special legislation in her behalf is not justified.

JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House,

The conference report was agreed to.

The SPEAKER. The Clerk will read the next report.

The Clerk read as follows:

CONFERENCE REPORT (NO. 1045).

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 5207) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 3, 12, 13, 15, 21, and 22, and agree to the same.

That the House recede from its amendments numbered 1, 2, 4, 5, 7, 8, 9, 10, 11, 14, 16, 17, 18, and 19.

Amendment numbered 6: That the Senate recede from its disagreement to the amendment of the House numbered 6, and agree to the same with an amendment as follows: Restore the matter stricken out by said amendment, and in lieu of the sum proposed therein insert the sum "$24"; and the House agree to the same.

Amendment numbered 20: That the Senate recede from its disagreement to the amendment of the House numbered 20, and agree to the same with an amendment as follows: Restore the

matter stricken out by said amendment, and in lieu of the sum proposed therein insert the sum "$30"; and the House agree to the same.

JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.
BENJ. F. SHIVELY,
THOMAS STERLING,
Managers on the part of the Senate.

STATEMENT.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on certain amendments of the House to the bill (S. 5207) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, submit the following written statement in explanation of the effect of the action agreed upon by the conference committee and submitted in the accompanying conference report as to each of the said amendments, viz:

On amendment No. 1: The House recedes, as the evidence on file fully justifies an allowance of proposed pension.

On amendment No. 2: The House recedes, as the proofs on file in support of the bill justify the allowance of proposed pension of $36 to soldier.

On amendment No. 3: The Senate concurs in the House amendment, as beneficiary is dead.

On amendment No. 4: The House recedes, as it is shown by the proof on file with the bill that soldier is totally disabled and unable to perform manual labor for his support, and that he has dependent upon him an invalid wife, and no income other than his pension.

On amendment No. 5: The House recedes, as the evidence on file discloses that allowance of the proposed pension of $12 to the widow is meritorious.

On amendment No. 6: The Senate concurs in the House amendment with an amendment allowing $24, which is believed to be justified by the evidence on file.

On amendment No. 7: The House recedes, as it is shown by the evidence on file that the allowance of the proposed pension is justified.

On amendment No. 8: The House recedes, as the proofs on file in support of the bill show that the soldier is totally disabled and unable to perform manual labor and has no income other than his pension.

On amendment No. 9: The House recedes, as the evidence on file in support of the bill fully justifies the allowance of the proposed pension of $30 to soldier.

On amendment No. 10: The House recedes, as the facts in the case, as shown by the proofs on file, show that the case is a meritorious one and that the proposed pension is justified.

On amendment No. 11: The House recedes, as the proof on file in support of the bill clearly shows that the proposed pension to the widow should be allowed.

On amendment No. 12: The Senate concurs in the House amendment, to conform with the rules of the committee.

On amendment No. 13: The Senate concurs in the House amendment, as the evidence on file discloses that widow is possessed of sufficient property that her case is not considered to come within the rules of the committees.

On amendment No. 14: The House recedes, as the facts in the case, shown by proofs on file, fully justify the allowance of proposed pension of $36 to soldier.

On amendment No. 15: The Senate concurs in the House amendment, as the proof fails to show facts sufficient to warrant proposed increase of pension.

On amendment No. 16: The House recedes, as the evidence filed shows soldier to be totally disabled and unable to work and without income.

On amendment No. 17: The House recedes, as the proposed allowance of $40 is fully justified by the evidence on file in support of the bill.

On amendment No. 18: The House recedes, as the evidence on file clearly shows the proposed pension of $30 to be fully justified.

On amendment No. 19: The House recedes, as the proposed pension is clearly shown to be meritorious by the proof on file.

On amendment No. 20: The Senate concurs in the House amendment with an amendment allowing soldier $30 per month, as it is shown that he is totally disabled and unable to work and has no income.

Amendment No. 21 is a typographical correction.

On amendment No. 22: The Senate concurs in the House amendment, as the facts in the case do not justify proposed increase of pension.

JOE J. RUSSELL,
GUY T. HELVERING,
M. P. KINKAID,
Managers on the part of the House.

The conference report was agreed to.

EXTENSION OF REMARKS.

Mr. RAKER. Mr. Speaker, I ask unanimous consent to extend in the RECORD my remarks upon the right of women to vote.

The SPEAKER. The gentleman from California asks unanimous consent to extend his remarks in the RECORD on female suffrage. Is there objection?

Mr. MANN. Reserving the right to object, does the gentleman intend to extend in the RECORD what was objected to the other day?

Mr. RAKER. What was that?

Mr. MANN. The gentleman from Wyoming objected, and I see that he is here.

The SPEAKER. Is there objection?

Mr. MONDELL. Mr. Speaker, reserving the right to object, does the gentleman from California intend to include in his remarks the statement of the premier, the Secretary of State, on this subject?

Mr. RAKER. That is my purpose.

Mr. MONDELL. I have no objection to having illustrious converts to the faith, the more illustrious the better.

The SPEAKER. Is there objection?

Mr. MANN. Reserving the right to object, I would like to ask the gentleman whether it would be perfectly agreeable to him to insert in connection with the statement of the Secretary of State the resolution or action of the Democratic caucus in this House, which the gentleman, of course, is familiar with?

Mr. RAKER. I will say to the gentleman that that will be taken up as a separate matter.

Mr. MANN. The gentleman from California wants to have circulated, for political purposes in his State, the statement of the Secretary of State, which might lead people in California to think that the Democratic Party in the House was in favor of woman suffrage. Does not the gentleman think that in fairness to his constituents he ought to insert in connection with his speech the record of the Democratic caucus declining to favor woman suffrage and declaring that it was not a national issue?

Mr. HEFLIN. Mr. Speaker, I would like to say to the gentleman from California that the Democratic caucus did not declare for or against woman suffrage. It was my resolution that the caucus adopted, and it simply declared that the question of suffrage is a State and not a Federal question.

Mr. MANN. That is what I stated when the gentleman said that the caucus took no such action.

The SPEAKER. Is there objection to the request of the gentleman from California? [After a pause.] The Chair hears none.

Mr. TALCOTT of New York. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by printing a letter from the Secretary of Commerce.

The SPEAKER. The gentleman from New York asks unanimous consent to extend his remarks by printing a letter from the Secretary of Commerce. Is there objection?

Mr. MANN. Reserving the right to object, in relation to what?

Mr. TALCOTT of New York. In relation to the statement issued by the Department of Commerce a week or so ago in relation to imports and exports.

Mr. MANN. I have been trying to get from the Department of Commerce for two months a statement which it issues and gives to the press. It no longer publishes its monthly information, as it used to. It says that it is willing to furnish it to me, but does not do so. Until it furnishes that information I shall object.

GENERAL DAM ACT.

Mr. ADAMSON. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the general dam bill.

The SPEAKER. The gentleman from Georgia moves that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of House bill 16053, the general dam bill.

The motion was agreed to.

Accordingly the House resolved itself into Committee of the Whole House on the state of the Union, with Mr. GARNER in the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the consideration of a bill of which the Clerk will read the title.

The Clerk read as follows:

A bill (H. R. 16053) to amend an act entitled "An act to regulate the construction of dams across navigable waters," approved June 21, 1906, as amended by the act approved June 23, 1910.

MESSAGE FROM THE SENATE.

The committee informally rose; and Mr. FOSTER having taken the chair as Speaker pro tempore, a message from the Senate, by Mr. Carr, one of its clerks, announced that the Senate had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1784) restoring to the public domain certain lands heretofore reserved for reservoir purposes at the headwaters of the Mississippi River and tributaries.

GENERAL DAM ACT.

The committee resumed its session.

Mr. TALCOTT of New York. Mr. Chairman, I move to strike out the last word. Last week the gentleman from Nebraska [Mr. SLOAN] placed in the RECORD certain tables which related to the imports——

Mr. MANN. Mr. Chairman, I make the point of order that the gentleman is not in order.

Mr. TALCOTT of New York. Mr. Chairman, I ask unanimous consent to proceed for five minutes.

The CHAIRMAN. The Chair thinks the point of order of the gentleman from Illinois to be well taken. The gentleman from New York asks unanimous consent to proceed for five minutes. Is there objection?

Mr. MANN. In order, of course.

The CHAIRMAN. The gentleman did not put that condition in his request.

Mr. MANN. I shall object unless——

The CHAIRMAN. Is there objection to the request of the gentleman from New York to proceed for five minutes? [After a pause.] The Chair hears none.

Mr. MANN. Oh, Mr. Chairman, the gentleman has the floor for five minutes. I ask whether it is to be in order or out of order?

Mr. DONOVAN. Mr. Chairman, reserving the right to object, I think the gentleman from Illinois is a bit previous in raising the question of order, for if there is one man who violates the rules of order in this House it is the gentleman from Illinois.

Mr. MANN. Mr. Chairman, I decline to be lectured by the gentleman from Connecticut. I am not out of order.

The CHAIRMAN. The gentleman from New York is recognized for five minutes.

Mr. TALCOTT of New York. Mr. Chairman, as I was saying, the gentleman from Nebraska [Mr. SLOAN] placed in the RECORD last week on two occasions tables which related to the imports of breadstuffs into the United States——

Mr. MANN. Mr. Chairman, I make the point of order that the gentleman is not proceeding in order.

The CHAIRMAN. The point of order is sustained, and the Clerk will read.

The Clerk read as follows:

SEC. 4. That as a part of the conditions and stipulations such approval shall provide—

(a) For reimbursement to the United States of all expenses incurred by the United States with reference to the project, including the cost of any investigation necessary for the approval of the plans as heretofore provided, and for such supervision of construction as may be necessary in the interest of the United States.

(b) For the payment to the United States of reasonable charges for the benefits which may accrue to such project through the construction, operation, and maintenance in and about such streams by the United States of headwater improvements of every kind nature, and description, including storage reservoirs or forested watersheds or land owned, located, or reserved by the United States at the headwaters of any navigable stream for the development, improvement, or preservation of navigation in such stream in which such dam may be located. Such charges shall be fixed from time to time by the Secretary of War and Chief of Engineers and to be based upon a reasonable compensation equitably apportioned among the grantee and others similarly situated upon the same stream receiving benefits by reason of increase of flow past their water-power structures artificially caused by such headwater improvements, the total charges to all such beneficiaries from any such headwater improvement not to exceed in any one year an amount equal to 5 per cent of the total investment cost in addition to the necessary annual expense of the operation of such headwater improvement.

Mr. RAINEY rose.

Mr. MANN. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. MANN. The Clerk has read only paragraphs (a) and (b) of section 4, and under the rules I think the whole section should be first read before amendments are offered.

Mr. ADAMSON. That is my understanding.

The CHAIRMAN. The Clerk will complete the reading of the section.

The Clerk read as follows:

That in the construction, maintenance, and operation of any project under this act for the promotion of navigation the grantee may, with the consent of the Secretary of War, use and occupy, when necessary for carrying out the project, lands acquired by the United States through purchase or condemnation and any part of the public lands withdrawn by the President from entry or disposition for the sole purpose of promoting navigation, which the President may do, as provided in the act entitled "An act to authorize the President of the United States to make withdrawal of public lands in certain cases," approved June 25, 1910. For any of such lands so used the grantee shall pay to the United States such charges as may be fixed by the Secretary of War.

(d) For the payment or securing the payment to the United States of such sums and in such manner as the Secretary of War and the Chief of Engineers may deem reasonable and just substantially to restore conditions upon such stream as to navigability as existing at the time of such approval, whenever the Secretary of War and the Chief of Engineers shall determine that navigation would be injured by reason of the construction, maintenance, and operation of such dam and its accessory works.

Mr. RAINEY. Mr. Chairman, I move to strike out the language from line 24, on page 4, down to and including line 19, on page 5.

The CHAIRMAN. The gentleman from Illinois offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amend by striking out, on page 4, lines 24 and 25, and down to and including line 19 on page 5.

Mr. MANN. Mr. Chairman, I ask that the Clerk report the language which it is proposed to strike out.

The CHAIRMAN. Without objection, the Clerk will report the language proposed to be stricken out.

The Clerk read as follows:

For the payment to the United States of reasonable charges for the benefits which may accrue to such project through the construction, operation, and maintenance, in and about such streams by the United States of headwater improvements of every kind, nature, and description, including storage reservoirs or forested watersheds or land owned, located, or reserved by the United States at the headwaters of any navigable stream for the development, improvement, or preservation of navigation in such stream in which such dam may be located. Such charges shall be fixed from time to time by the Secretary of War and Chief of Engineers and to be based upon a reasonable compensation equitably apportioned among the grantee and others similarly situated upon the same stream receiving benefits by reason of increase of flow past their water-power structures artificially caused by such headwater improvements, the total charges to all such beneficiaries from any such headwater improvement not to exceed in any one year an amount equal to 5 per cent of the total investment cost, in addition to the necessary annual expense of the operation of such headwater improvement.

Mr. ADAMSON. Mr. Chairman, can we not reach some agreement as to the time for debate upon this section?

Mr. RAINEY. I think I can get through in 10 minutes.

Mr. ADAMSON. How much time will gentlemen on the other side of the aisle require on this section?

Mr. RAINEY. I mean on this amendment. I have two other amendments.

Mr. ADAMSON. How much more time will the gentleman want on the entire section?

Mr. RAINEY. I think I would like to have at least 20 minutes.

Mr. STEVENS of New Hampshire. I have one amendment which I desire to offer.

Mr. STEVENS of Minnesota. Mr. Chairman, I think we had better proceed for the present. There are several amendments to be offered upon this side.

Mr. ADAMSON. I have no desire to cut off the offering of amendments.

Mr. STEVENS of Minnesota. I think we can proceed a little better if we proceed on each amendment by itself.

Mr. UNDERWOOD. Mr. Chairman, I think it is important that we should get through with this bill. I do not want to unduly cut off debate, but I think that the debate ought to be limited to five minutes on a side on each amendment, and I wish to give notice that I shall insist upon the enforcement of the rule.

Mr. ADAMSON. Mr. Chairman, I do not want to be drastic at all, but we have consumed lots of time in debate, and the whole subject has been exhausted. I would be very glad if we could have some amicable agreement for time on every section.

Mr. STEVENS of Minnesota. Mr. Chairman, I think the quicker way would be to proceed in order on each amendment as it is offered.

Mr. DONOVAN. Mr. Chairman, I wish to make an observation. The gentleman from New York [Mr. TALCOTT], who is

here every session of the House and who seldom addresses the House, asked a short time ago to be permitted to proceed for five minutes. I think we had better have a quorum here to do business. There is not a Member of this House who is more faithful in attendance but who takes up less time than the gentleman from New York.

Mr. FOSTER. Mr. Chairman, I demand the regular order.

Mr. DONOVAN. I am going to make the point of order of no quorum.

Mr. TALCOTT of New York. Oh, I ask the gentleman not to do that.

Mr. DONOVAN. Well, what is the use of violating the rules forty times a day?

The CHAIRMAN. Does the gentleman from Connecticut insist upon his point of order?

Mr. DONOVAN. No; I withdraw the point of order.

Mr. RAINEY. Mr. Chairman, this is the one clause in the bill as reported by the committee which provides for revenue. At this point in the bill I intended, as I stated during the general debate, to move to strike out this entire provision for revenue and to substitute another provision similar to the Sherley amendment, which has already been adopted.

Mr. MANN. Mr. Chairman, will the gentleman yield for a question?

Mr. RAINEY. Yes.

Mr. MANN. Is this provision in the substitute which the gentleman has moved to strike out——

Mr. RAINEY. I have simply moved to strike out certain language. I have not offered any substitute.

Mr. MANN. The gentleman does not understand me. The Clerk is reading the substitute?

Mr. RAINEY. Yes.

Mr. MANN. And the gentleman has moved to strike out certain language?

Mr. RAINEY. Yes.

Mr. MANN. Is the provision which the gentleman moves to strike out in conflict with the Sherley amendment?

Mr. RAINEY. No; it is not in conflict with anything in the world. It is not in conflict with anything that anybody can possibly imagine.

Mr. MANN. I do not mean the gentleman's amendment, but I mean the provision in the substitute.

Mr. RAINEY. No; it is not in conflict with the Sherley amendment, nor with anything else, and that is the reason I am moving to strike it out. I intended to offer an amendment of my own similar to the Sherley amendment, striking out what I have now moved to strike out and inserting a provision similar to the Sherley amendment, but I am moving now to strike this out because it means absolutely nothing. The Sherley amendment accomplishes what I wanted accomplished. Every time the general dam bill is amended this particular provision is carefully rewritten, and it has been rewritten two or three times in this proposed bill before the bill has reached its present stage.

I do not think this clause ought to remain in the bill, thereby creating the impression that we at some future time expect to get revenue out of it. The Chief of Engineers holds that we can never expect any revenue from this clause, and I called attention during the speech of the gentleman from Minnesota [Mr. STEVENS] to the recent letter to me from the Chief of Engineers on this question. Here is an attempt to collect from dams located along a river returns for benefits they may derive from headwater improvements or reforested headwaters. There are no headwater reservoirs on any river in the United States except on the Mississippi River. The Chief of Engineers holds these reservoirs do not benefit in the least dams that may be below them, and in effect holds that no headwater reservoirs will ever benefit any dam so far as water power is concerned, because during the period of low water, and that is always in the wintertime, these storage reservoirs are closed in order to store up water for the ensuing period of navigation, and they therefore hold that headwater reservoirs do not do any good so far as the development of water power is concerned. The only other improvements that can possibly be imagined are reforested headwaters, and the Chief of Engineers holds it is impossible to determine from the data they have whether reforested headwaters will ever be of any assistance to water-power projects upon rivers below the headwaters so reforested, and in his letter to me, in effect, he states that there is only one way to determine that question, and that is to denude the headwaters of rivers, cut off all vegetation, and then make observations for a period of 100 years; then reforest the same hills and make observations for another period of another 100 years. Now, it will take 100 years, as anybody knows, to properly reforest these headwater sections again. Therefore, before we can determine whether the dams in the river where headwaters have been reforested will be benefited by the reforesting of the headwaters we will have to wait 300 years. I want to read what the War Department holds——

The CHAIRMAN. The time of the gentleman has expired.

Mr. RAINEY. May I have five minutes more?

Mr. UNDERWOOD. Mr. Chairman, I do not like to object to the request of my friend, but I think we ought to move along with this bill, and I stated before the gentleman started——

Mr. MANN. I think when debate is legitimate and a gentleman wants to discuss some amendment he ought to have five minutes more.

Mr. UNDERWOOD. I have no objection in the world to the gentleman proceeding, but we never will get through if we have unlimited debate in the committee; but as the gentleman had taken the floor I will yield to the gentleman's request, but after this I intend to insist.

Mr. MANN. Mr. Chairman, the gentleman from Alabama will remember——

Mr. DONOVAN. Mr. Chairman, a point of order.

The CHAIRMAN. The gentleman will state it.

Mr. DONOVAN. The gentleman from Illinois has not the floor, and yet——

The CHAIRMAN. The gentleman from Illinois asked unanimous consent to proceed for five minutes. Is there objection?

Mr. MANN. Mr. Chairman, reserving the right to object, the gentleman from Alabama will remember when the matter of debate was under consideration it was stated that there would be fair liberality of debate under the five-minute rule.

Mr. UNDERWOOD. I desire to do that now, but I will say to the gentleman candidly what my purpose is. It is not so much the desire to push this bill. I know this bill will go to the Senate and be largely amended and come back finally on a conference report. If it goes through, these questions will be thrashed out, but I will say very candidly a good many Members want to get home——

Mr. MANN. I understand——

Mr. UNDERWOOD. There is following this bill, which can not come up until this bill is out of the way, the Moon bill in reference to railway mail pay and with reference to parcel post and other matters, and I would like it passed by the House before we agree that a quorum can drop out for a few weeks. Now, I am anxious to get this bill through.

Mr. MANN. I understand, but why not follow the custom which has prevailed largely, and I think quite successfully, in reference to this, and that is to limit the time for debate by unanimous consent and give gentlemen time who desire to have it.

Mr. UNDERWOOD. I am very willing to do that if the House will agree on a reasonable time for debate. We spent two days in debating one item, and I think the first two or three gentlemen who spoke gave all that probably could be stated in reference to it.

Mr. MANN. Oh, well, the gentleman from Alabama spoke in general debate, and then spoke again, and I do not know, but I thought, he gave us fuller information. The gentleman spoke and gave us all the information possible.

Mr. UNDERWOOD. I am not speaking of general debate, but I am sure that my speech, if carefully read, will bring some information to the House, but I am anxious, if the House is willing, to agree to a reasonable amount of debate. I ask unanimous consent, Mr. Chairman, that general debate on this amendment close in 15 minutes, 5 minutes to be given to the gentleman from Illinois, 5 minutes to myself, to be yielded——

Mr. STEVENS of Minnesota. Mr. Chairman, since I am responsible for the numerous changes described, I think I ought to have an opportunity to say something, since I am responsible for the original proposition.

Mr. UNDERWOOD. Then I will ask that general debate close in 30 minutes on this amendment, half the time to be controlled by the gentleman from Illinois and half of the time by the gentleman from Minnesota.

Mr. STEVENS of Minnesota. I do not think we need take as much time as that. If the gentleman can be satisfied with 10 minutes I think we can be.

Mr. UNDERWOOD. Well, say 20 minutes.

Mr. LIEB. May I have five minutes?

The CHAIRMAN. The gentleman from Alabama asks unanimous consent that all debate close in 20 minutes, 10 minutes to be controlled by the gentleman from Illinois and 10 minutes by the gentleman from Minnesota. Is there objection?

Mr. COOPER. A parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. COOPER. Does that relate to the amendment offered by the gentleman from Illinois [Mr. RAINEY] only?

Mr. UNDERWOOD. Solely.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none. The gentleman from Illinois [Mr. RAINEY] is recognized.

Mr. RAINEY. Mr. Chairman, I simply want to read some extracts from a letter on the subject of headwater reservoirs and reforested headwaters from the Chief of Engineers:

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, May 14, 1914.

The SECRETARY OF WAR.

SIR: 1. Referring to letter of the 8th instant from Hon. H. T. RAINEY, M. C., to you, asking for certain information in regard to reservoirs and forests at the headwaters of navigable streams, and particularly with reference to the Mississippi River, I have the honor to report that no charges have ever been imposed by this department on the operators of power developments on navigable streams on account of any advantage which may accrue to them through the maintenance of reservoirs or forests.

2. There are extensive reservoirs at the headwaters of the Mississippi River, which were built for the purpose of benefiting navigation. Whether the operation of these reservoirs in the interest of navigation will produce any beneficial effect on the power development at Keokuk is a question which has not been investigated, but it is known that the effect of the operation of these reservoirs is not beneficial to power developments at Minneapolis.

3. The season of lowest water on the upper Mississippi, i. e., the time when water is most needed for the power developments, is during the winter, the season at which navigation is closed. During this season the outlets of the reservoirs are closed to the minimum for the purpose of storing water in the reservoirs in order that it may be released during the low stages of the navigation season. The result is that the natural low-water flow during the winter is still further reduced, thereby reducing the amount of power which can be developed from the water wheels. These reservoirs are the only ones in the United States which have been built in the interest of navigation.

4. The effect of forests on the flow of navigable streams has been very thoroughly investigated by the Engineer Department in connection with the improvement of navigable streams, and these investigations fail to show that forests have any beneficial effect upon the stream flow, particularly during low water. I presume that before a charge should be made to the operators of a power dam on a navigable stream for additional water due to forests established at its headwaters it would be necessary to prove that the forests had contributed a definite additional flow to the low-water volume. The effect of forests on the flow of any stream can only be told by a series of observations extending over a sufficient period of time to eliminate changes due to varying amounts of rainfall. Such a series of observations should be not less than 100 years in length, and preferably longer than this, for each condition—that is, in forested and denuded condition—in order to arrive at any results which would be of positive value.

Very respectfully,

DAN C. KINGMAN,
Chief of Engineers United States Army.

That is all there is to this. We can not expect the engineers to hold for at least 300 years that reforested headwaters would be of any benefit to power dams located on streams, and before that time we are liable to amend this bill again.

I reserve the balance of my time.

Mr. STEVENS of Minnesota. Mr. Chairman, the proposition of the gentleman from Illinois [Mr. RAINEY] is a singular commentary on the progress of this bill. He moves to strike out one of the provisions inserted by the committee, because he does not think it will prove effective in raising revenue, and he objects to any method the committee proposes to raise revenue from the use of the property of the United States. When he previously brought the matter before the committee I addressed the committee briefly in the time of the gentleman from Georgia, and notified the committee that I did not take much stock in the original measure to acquire forest reservations at the headwaters of streams for the benefit of navigation, and I have not seen much reason yet to change my mind. But these reservations have been acquired for the benefit of navigation at an expenditure of $8,000,000, and we thought it was our duty to get the utmost out of them for power purposes as well as for navigation.

I am familiar with the situation on the Mississippi River and especially as to the use of the navigation reservoirs at its headwaters. After about 17 years' experience and participating in two careful investigations of these reservoirs I find the situation is this: Those reservoirs were constructed, six of the largest in the world, to provide suitable water at the head of navigation at St. Paul, at the levee, 18 inches of water, for about 100 days during the dry season of the summer, from about the 1st of July until about the 1st of October. That was the design of the reservoirs, and they have fulfilled their mission. They do send that amount of water down, and they have improved navigation. Now, the mills below those reservoirs necessarily use that water during the dry period of the summer, and it occurred to your committee that such water should equally benefit those mills, and they ought to pay for the use of that water which may benefit them during the summer. I know the mills will maintain that they receive no benefit from it. Of course they will, since they do not wish to pay for what heretofore they have received for nothing. But it seemed to me a matter of common sense that they do receive some benefit during the dry season of the summer and not during the winter. We never have claimed that they do receive benefit during the winter, but during the summer they do, and they ought to pay for it.

And it is not a question to be determined by the Chief of Engineers or any departmental official. The question is a question of fact and law to be determined by the courts, and one thing which we have done in the framing of this amendment is to make it compulsory that these charges shall be fixed from time to time by the administrative officials, compelling the engineers to make a record of what these charges should be, and fixing the standard from the benefits received. There are numerous gauges along the river that determine exactly how much water comes down, how much water is let out of the reservoirs, and how the water proceeds down the stream, and it can be accurately determined by measurement. So that will be a question for the courts to determine, and not for the Chief of Engineers. It will be his duty to fix a charge and to enforce it in the courts. The letter of the gentleman from Illinois amounts to nothing but the opinion of the Chief of Engineers. Other officials of other departments and of high standing differ on that point and believe that that value does exist. Nothing will settle this matter but the decision of the courts as to whether or not this provision will be made effective, and such benefits can be paid for by those who receive them.

One thing more. The gentleman remembers, and I presume that he voted for, the so-called Weeks bill when it was before the House. The claim was made that the bill was designed to benefit navigation. The United States has spent $3,000,000 in securing forest reserves in the Appalachian and White Mountain Ranges, and the basis of the contention is that these reservations do benefit navigation.

The Geological Survey and their engineers under the law are obliged to certify that they do benefit navigation. Undoubtedly that department differs from the opinions of the engineers. Now, if the waters from those reserves do benefit navigation, it seems extremely probable to me that they equally benefit water power. And the same question will be determined, not by the engineers, but by the courts, as to whether or not there is an actual benefit to these water powers.

I hold in my hand the July number of the Review of Reviews, in which there is an article by Philip W. Ayres, the forester of the State of New Hampshire, on this very subject, in which he shows at considerable length and force the benefits which will accrue to navigation and water power by means of these forest reserves. Of course he is a very ardent admirer of Mr. Pinchot and follows his doctrine. And he shows to his own satisfaction that this $8,000,000 has been wisely spent. And I will just read this sentence:

With this new use water power increases greatly in value.

Now, Mr. Chairman, we ought to have a chance in order that this $8,000,000 should realize some benefit to the Treasury, some benefit to the people, and that the $2,000,000 expended upon the reservoirs should pay some benefits, and this amendment accomplishes that fact.

The CHAIRMAN. The time of the gentleman from Minnesota has expired.

Mr. UNDERWOOD. Does the gentleman from Illinois [Mr. RAINEY] desire to use the rest of his time?

Mr. RAINEY. Mr. Chairman, how much time have I remaining?

The CHAIRMAN. The gentleman has seven minutes.

Mr. RAINEY. I shall not need it all.

Mr. STEVENS of Minnesota. Mr. Chairman, I will yield to the gentleman from Alabama [Mr. UNDERWOOD] the rest of my time.

Mr. UNDERWOOD. Does the gentleman from Illinois [Mr. RAINEY] expect to conclude in one speech?

Mr. RAINEY. I will conclude in one speech; yes, sir.

Mr. UNDERWOOD. Mr. Chairman, my view about this dam bill is that we want to put some restriction on it or we will not get capital to invest, and I do believe in doing the fair thing by the Government.

Now, the gentleman proposes to strike out the language that reads as follows:

For the payment to the United States of reasonable charges for the benefits which may accrue to such projects through the construction, operation, and maintenance, in and about such streams by the United States of headwater improvements of every kind, nature, and description, including storage reservoirs—

And so forth.

Now, I think the gentleman has the Mississippi River in his mind, and he is only talking about the Mississippi River, and he thinks there is no purpose in this proposition because he can not see much to be accomplished from the Government outside the Mississippi River. I am talking for the interests

of my State, so far as paying part of this charge is concerned. I want to tell you of a concrete case.

The Alabama River flows through low land. It is difficult to build dams and dikes on it. The Coosa River flows into the Alabama. At the headwaters of the Coosa River, in the State of Georgia, near my friend's district, there is a possibility of making great storage reservoirs. The plans of the United States engineers to-day, for the purpose of creating navigation on the Alabama River, have in them that proposition and they have gone so far as to perfect plans, although no work has been done on them as yet.

They propose to make these storage reservoirs in Georgia that will let loose the water in the dry season, to furnish sufficient water to give annual navigation in the Alabama; that is, when the water flows low. Well, now, the water out of those reservoirs will come down the Coosa before it reaches the Alabama. It will go right through Lock No. 12 on the Coosa River, which is already built, which is already controlled by a private corporation, which is already furnishing light to the city of Birmingham; and if that plan is carried out it will not increase the present primary power in that dam, but it will make a great deal of its secondary power primary power, because a dam, of course, in the rainy season, has a greater flow and more water, which is called secondary power. That can not be used for lighting purposes or street-car purposes, but could be used for manufacturing purposes.

We had built these dams in the State of Georgia not in any way connected with the dam on the Coosa River, and really the plan was agreed upon before this dam was built originally by the engineers. It will increase the primary power of that dam very greatly. The power of the dam now amounts to about 10,000 horsepower. It has a very large secondary power because of the flow of water in certain seasons of the year. I do not know exactly—it is merely a guess on my part—but the building of these storage dams for the improvement of the Alabama River would probably increase the primary horsepower at that time 10,000 horsepower.

Now, all that this section says is that if that is done at the Government expense, these dams, located between the reservoir at the head of the stream and that part of the stream which is going to be profited by it shall pay a reasonable charge to the United States Government. Now, I did not agree to the Sherley amendment, because I think it will keep capital out of those dams, but I want to do what is fair to the Government of the United States, and if they build a reservoir at the head stream and it increases the primary power of that dam and is of benefit to the owner, I am perfectly willing, and I think it is perfectly just, that the owner of that dam should pay to the United States Government a reasonable contribution therefor. I think that is all that there is in it.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

Mr. RAINEY rose.

The CHAIRMAN. The gentleman from Illinois [Mr. RAINEY] is recognized.

Mr. RAINEY. Mr. Chairman, it is amusing to me the strenuous manner in which these gentlemen, who were opposed to a compensation amendment that means nothing, insist upon this item in this bill, which has never meant anything and never will mean anything.

Now, there are storage reservoirs at the headwaters of only one river, and therefore I have discussed that matter in my correspondence with the Chief of Engineers, and he says that the reservoirs at the headwaters of the river are closed in the wintertime—that is the period of low water—and the water-power possibilities at a dam are regulated by how much power you can develop at low water. That is the only thing that counts, and the period of low water is in the wintertime, during the period when there are rains at the headwaters and when there are snows; during the season when they impound water they close these reservoirs. That is all there is to it. You can not get anything from reservoirs that will benefit dams downstream.

I have just read the holding of the Chief of Engineers to the effect that it will take 300 years to find out whether reforested headwaters will assist in the development of water power downstream. So what is the use of keeping this provision in here? This is a gold brick; it always has been and always will be. It is holding out to the people an evidence of strenuous efforts on the part of this Congress to collect something that never can possibly be collected.

We can not decide this question by reference to articles in the Review of Reviews nor by saying it should be referred to the courts. If it should ever get to the courts the opinion of our engineers would settle it there. They would testify that power dams would not be benefited by headwater reservoirs nor by reforested headwaters, and that would be the end of it, even if the questions were ever submitted to a court.

Now, if they have already found that the headwater improvements on the Mississippi River do not benefit the water power at Minneapolis, by what mysterious sort of reasoning will they find that dams located above Minneapolis will be benefited and therefore ought to pay? The same water that goes over the dams above Minneapolis comes down over the dam at Minneapolis. How can you keep this clause in this bill on the theory that at some time in the future those dams may be benefited when the department holds otherwise?

Now, I want this stricken out, because it means nothing and because it obscures the issue of compensation for the Government. The committee stands strenuously for this, which means nothing, and that is the reason, I think, they stand for it. They are opposed to the Sherley amendment, which means something, and that is the reason they are opposed to it. The Sherley amendment, as the position of the committee seems to me to be, was unconstitutional for the reason that it will produce revenue, and this clause the committee holds to be constitutional because it produces no revenue and never will produce any. In the interest of conservation and in order that the compensation issue may not be obscured and in order to assist the Government in getting something that it ought to get, I am asking that this clause be stricken out.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. RAINEY].

The question was taken, and the Chairman announced that the noes appeared to have it.

Mr. RAINEY. A division, Mr. Chairman.

The CHAIRMAN. A division is demanded.

The committee divided; and there were—ayes 8, noes 24.

So the amendment was rejected.

Mr. THOMSON of Illinois. Mr. Chairman, I move to amend this paragraph (b), which was the subject of the amendment of the gentleman from Illinois [Mr. RAINEY], by striking out the word "to," so that it would read:

Such charges shall be fixed from time to time by the Secretary of War and Chief of Engineers and be based upon a reasonable compensation equitably apportioned—

And so on.

Mr. ADAMSON. Why not strike out "and to be," and let it just say "based upon"? It will then read:

Such charges shall be fixed from time to time * * * based upon—

That is the best reading. Strike out "and to be." That is the best possible reading.

Mr. THOMSON of Illinois. If you put a comma after "Engineers."

Mr. ADAMSON. I do not object to the comma.

Mr. THOMSON of Illinois. I am willing to change my amendment, to put a comma after the word "Engineers" and strike out the words "and to be."

Mr. ADAMSON. That makes it better.

The CHAIRMAN. Is there objection to the modification of the amendment?

There was no objection.

The CHAIRMAN. The Clerk will report the amendment as modified.

The Clerk read as follows:

Page 5, line 10, place a comma after the word "Engineers" and strike out the words "and to be."

The amendment was agreed to.

Mr. THOMSON of Illinois. Mr. Chairman. I send to the desk three brief amendments, all relating to paragraph (d), on page 6.

Mr. BRYAN. I have an amendment to paragraph (b). Would the gentleman object to taking that up first and finishing with paragraph (b)?

Mr. THOMSON of Illinois. All of the section has been read. My amendment is in order.

The CHAIRMAN. The Clerk will report the first amendment proposed by the gentleman from Illinois [Mr. THOMSON].

The Clerk read as follows:

Amend, page 6, line 22, by striking out the word "just" and inserting in lieu thereof the words "necessary to," and also by striking out the word "to," in the same line, after the word "substantially."

Mr. ADAMSON. The gentleman insists on splitting the infinitive. I wrote the words in that way to avoid splitting the infinitive.

Mr. THOMSON of Illinois. Mr. Chairman, I think that the splitting is being done by the gentleman from Georgia [Mr. ADAMSON].

Mr. ADAMSON. I think not. "To restore" is in the infinitive, and I object to splitting it.

Mr. THOMSON of Illinois. Mr. Chairman, if the amendment I have suggested is adopted, the language will read this way, which seems to me to be much smoother:

(d) For the payment or securing the payment to the United States of such sums and in such manner as the Secretary of War and the Chief of Engineers may deem reasonable and necessary to substantially restore conditions upon such stream as to navigability as existing at the time of such approval.

Mr. ADAMSON. That plays havoc with the grammar. It splits the infinitive, and I object to it.

The CHAIRMAN. The question is on the amendment of the gentleman from Illinois.

The amendment was rejected.

The CHAIRMAN. The Clerk will report the next amendment offered by the gentleman from Illinois [Mr. THOMSON].

The Clerk read as follows:

Amend, page 6, line 23, by striking out the words "as existing" and insert in lieu thereof the words "which exist."

Mr. THOMSON of Illinois. So that the line will read:

Such stream as to navigability which exist at the time of such approval——

Mr. ADAMSON. I think it is much better to strike out the word "as" and to insert a comma.

Mr. THOMSON of Illinois. That is satisfactory to me.

Mr. ADAMSON. So that is will read:

Such stream as to navigability, existing at the time of such approval.

The CHAIRMAN. Is there objection to striking out the word "as," after the word "navigability," in line 23, and inserting a comma in lieu thereof?

There was no objection.

The CHAIRMAN. The Clerk will report the next amendment offered by the gentleman from Illinois [Mr. THOMSON].

The Clerk read as follows:

Amend, page 6, line 25, by striking out the word "would" and inserting in lieu thereof the word "might."

Mr. THOMSON of Illinois. Mr. Chairman, it seems to me that with the word "would" in there it would mean that the Secretary of War and Chief of Engineers could not make the requirements specified in this paragraph unless in their judgment the dam that was going to be put in would actually, by reason of its construction, interfere with navigation. I think they ought to have the power to bring this clause into operation if in their judgment the construction of the dam might interfere with navigation.

Mr. ADAMSON. I am opposed to weakening the language. It is conditional anyhow, and if you are going to change it I prefer to go back to the old formula "might, could, would, or should." If you do not do that, it ought to stand as it is. It is a matter of opinion with the engineers as to whether the change, if made, will injure navigation.

Mr. THOMSON of Illinois. Yes; but unless he believes it would as a matter of fact injure navigation, unless he is certain enough about it to be able to say that it actually would interfere with navigation, he can not require the security for the payment. It would not weaken it to change it, but inserting the word "might" would strengthen it. The Chief of Engineers and the Secretary of War ought to have this power, not only when they believe that the construction of the dam would interfere with navigation, but whenever they think it might interfere with navigation. There may be a case where they could say that the construction of the dam in a certain place might injure navigation, where they do not know that it would, but they believe it might, and in such a case they should be able to exact compensation or insist that the Government be secured. In this case, with the word "would" in there, they practically could not exact compensation or security for compensation unless they were sure enough about it to say that it actually would, in their judgment, interfere with navigation.

Mr. MANN. Mr. Chairman, I will confess that when I read section (d) I could not understand what it meant, in the form of the language. It refers to a stipulation exacted by the Secretary of War to require the payment of money to restore conditions of navigation on the river, after the dam is constructed and in operation, to the conditions existing before the dam was constructed. It then says that whenever the Secretary of War shall determine that navigation would be injured by reason of the construction, they shall obtain payment or security for payment. It is then a question of fact. There is no difference between "might" and "would" as far as that is concerned. It is then a question of fact whether navigation is injured or not. It projects into the future a proposition to be determined on the facts as then existing, and uses language in the subjunctive mood, when it should refer to a question of actually existing facts. I would ask my friend from Illinois or my friend from Georgia if that is not the case?

Mr. THOMSON of Illinois. I do not wish to answer the gentleman if the gentleman from Georgia [Mr. ADAMSON] does.

Mr. ADAMSON. What is the question?

Mr. MANN. This refers to a condition which may exist after the dam is constructed and in operation.

Mr. ADAMSON. Undoubtedly.

Mr. MANN. Giving the Secretary of War authority to restore conditions if navigation is then injured by the dam.

Mr. ADAMSON. He does not determine it now, whether it will be or not.

Mr. MANN. No.

Mr. ADAMSON. But if after the thing happens navigation would be injured, as afterwards determined, he obtains security to meet it.

Mr. MANN. But when he determines it, he determines the question as to whether navigation is injured or not.

Mr. THOMSON of Illinois. This is a condition that is going originally to prevail before the dam is built; and, going back to the beginning of the section, it says that as a part of the conditions of such approval it shall provide for the payment or securing the payment to the United States of such sums and in such manner, and so on, as they may deem reasonable and necessary substantially to restore conditions upon such stream as to navigability existing at the time of such approval.

Whenever the Secretary of War and the Chief of Engineers shall determine at the time of the approval——

Mr. MANN. That navigation is injured.

Mr. THOMSON of Illinois. No; that this dam, that has not been built——

Mr. MANN. That has been built.

Mr. ADAMSON. If the gentleman will permit me, I will give him the exact grammar of the situation. A bond for payment is required at the time of the approval of the specifications.

Mr. MANN. A stipulation is required.

Mr. ADAMSON. And whenever the Secretary of War and the Chief of Engineers afterwards shall determine—and they determine after the dam is built—I think the word "would" is wrong, and it should be "shall have been."

Mr. MANN. No bond is required, but there is a stipulation.

Mr. ADAMSON. It says for the payment or securing the payment.

Mr. MANN. They may exact a bond, but the stipulation is that the grantee shall pay or secure the payment to the United States of such sum of money as the Secretary of War and the Chief of Engineers may deem reasonable to restore conditions upon such stream as to navigability after the dam is constructed, if the construction of the dam then injures navigation.

Mr. ADAMSON. The language should be "shall have" injured. When you are talking about the future the grammar of the situation is that in case of a future event, if the condition arises, you use the words "shall have been"—if navigation shall have been injured.

Mr. MANN. The future is indicated in the word "shall"—whenever the Secretary of War shall determine that something then exists. It is perfectly plain.

Mr. THOMSON of Illinois. Mr. Chairman, I ask unanimous consent to proceed for five minutes.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent to proceed for five minutes. Is there objection?

There was no objection.

Mr. THOMSON of Illinois. Mr. Chairman, the question in paragraph (d) is whether or not there shall be placed in the original approval a condition or stipulation for the payment of certain sums to the Government under given circumstances. This question is to arise at the time of the approval of the proposition in the first place. At that time no dam has been built, but the Secretary of War and the Chief of Engineers, in determining whether they shall put a clause in the approval to secure payment, must depend on whether their opinion is that the building of the dam is going to interfere with navigation.

Mr. MANN. Will the gentleman yield?

Mr. THOMSON of Illinois. Yes.

Mr. MANN. Does not the gentleman think that the stipulation has to go into every approval?

Mr. THOMSON of Illinois. No; I do not.

Mr. MANN. The word "whenever" refers to a time after the dam is constructed and not whenever the stipulation goes in. The stipulation goes into every approval.

Mr. THOMSON of Illinois. I do not think so. I think that in some cases the Secretary of War and the Chief of Engineers may determine that the construction of these works, this dam and lock that are included in the plans, can not possibly interfere with navigation, in which case there would be no need of

the stipulation. Perhaps they might determine that it was going to be of great assistance to navigation, and in that case there would be no necessity of putting the stipulation in.

Mr. McKENZIE. Will the gentleman yield?

Mr. THOMSON of Illinois. Yes.

Mr. McKENZIE. Is it not the purpose of this provision to serve notice on the grantee when he makes the application to construct a dam that if, after he has the dam constructed, navigation is found to have been interfered with by such construction, then, and in that case, he shall comply with what is laid down in this section?

Mr. THOMSON of Illinois. It does not read that way. If it were so intended, the word "would" is not the correct word.

Mr. ADAMSON. Is not the gentleman from Illinois willing to use the words "has been"?

Mr. BRYAN. Mr. Chairman, I offer a substitute.

Mr. THOMSON of Illinois. Is this a substitute for my amendment?

Mr. BRYAN. No; I will withhold it for the present.

Mr. ADAMSON. I suggest that the gentleman from Illinois agree to modify his amendment to the words "has been"——

Mr. THOMSON of Illinois. I am willing to do that.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent to modify his amendment so as to use the words "has been." The question is on the modified amendment.

The question was taken, and the amendment was agreed to.

Mr. BRYAN. Mr. Chairman, I offer an amendment to paragraph (d) while we are on it.

The Clerk read as follows:

Strike out paragraph (d) and insert:

"(d) For the payment to the United States of such charge or charges as the Secretary of War and the Chief of Engineers may deem reasonable, and as may be sufficient to restore conditions upon such stream as to navigability as existing at the time of such approval whenever they shall determine that navigation has been or will be injured by reason of the construction, maintenance, and operation of such dam and its accessory and appurtenant works."

Mr. BRYAN. Mr. Chairman, I do not know how many people read the CONGRESSIONAL RECORD, but if anybody reads this debate, such person can come to only one conclusion, and that is that there are many irregularities in this bill. Gentlemen are having considerable discussion over a matter of tense, but that is not all involved in this particular paragraph. The paragraph (d) in the Adamson bill is as follows:

(d) For the payment or securing the payment to the United States of such sums and in such manner as the Secretary of War and the Chief of Engineers may deem reasonable and just substantially to restore conditions upon such stream as to navigability as existing at the time of such approval, whenever the Secretary of War and the Chief of Engineers shall determine that navigation would be injured by reason of the construction, maintenance, and operation of such dam and its accessory works.

Now, what I propose here is for the payment to the United States of such charge or charges as the Secretary of War and the Chief of Engineers may deem reasonable, and as may be sufficient to restore conditions upon such stream as to navigability as existed at the time of such approval whenever they shall determine that navigation has been or will be injured by reason of the construction, maintenance, and operation of such dam and its accessories and appurtenant works.

There is nothing definite about this security arrangement. There is nothing following the term or securing the payment that can have any meaning or definiteness as to bond or anything of that kind, and if the engineers when they make the survey conclude that there has been or will be a benefit, then the charge comes, and if they do not, there is no charge. I think the substitute is definite and means something, and that the language in the other section will be subject to interpretation, all kinds of interpretation, and that there never will come anything satisfying from it.

Mr. ADAMSON. Mr. Chairman, I do not see any improvement in that, and I hope the amendment will be voted down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Washington.

The amendment was rejected.

Mr. BRYAN. Mr. Chairman, I have another amendment, which I spoke of a few minutes ago, and which I send to the desk and ask to have read.

The Clerk read as follows:

Strike out paragraph (b), pages 4 and 5, and insert the following:

"(b) For the payment to the United States of reasonable annual charges for the benefits which may accrue to such project from the construction, operation, and maintenance by the United States of headwater improvements on any such stream, including storage reservoirs and forest watersheds or lands acquired or held by the United States, such charges to be fixed from time to time by the Secretary of War and be based upon a reasonable compensation apportioned among the grantee and others similarly situated upon the same stream receiving direct benefits by reason of the development, improvement, or preservation of navigation in such streams in which such dam or appurtenant or accessory works may be constructed."

Mr. BRYAN. Mr. Chairman, the first proposition involved in this substitute is that instead of a provision for such reasonable charge, there is provision for such reasonable annual charges, which evidently the committee means, I should think, but it is essential to make it definite.

Mr. STEVENS of Minnesota. We make it from time to time.

Mr. BRYAN. Then, over on page 5, they refer to such lands as are—

owned, located, or reserved by the United States at the headwaters of any navigable stream.

The United States is continually acquiring lands for that purpose, and holding other lands for that purpose, and "owned, located, or reserved" I do not believe is as definite as the words "acquired and held." But that may be considered only a matter of construction.

Down further in the bill, in lines 12 and 13, this charge is to be based on benefits by reason of increase in the flow past "their water-power structures artificially caused by such headwater improvements." That may not be all of the benefits. The gentleman from Alabama believes that these benefits ought to be apportioned, but in assessing benefits they ought to be able to determine what the total benefits are and not just simply what benefits may accrue from the increase in the flow of water past the dam. But there is a further and important divergence. The original bill reads:

Not to exceed in any one year an amount equal to 5 per cent of the total investment cost—

That means what? Does that mean total investment cost of impounding headwaters or the lands reserved? Suppose we have a large lot of lands that have been obtained from the Indians. We do not know what the investment cost is. There is no reason for making any such restriction as that. The board in fixing it ought to be able to rely, and ought only to be required to rely, on benefits derived as in our laws for assessing benefits, where benefits are apportioned, and the suggestion that it be on the total investment is indefinite. Is it to be based on the land owned or the land acquired, or what is the meaning of it? There is nothing here about bonds, so that this security feature, it seems to me, is not worth anything.

Mr. ADAMSON. Mr. Chairman, I reckon that it is unnecessary to discuss grammar any further with the gentleman. It is supposed that that refers to the last thing mentioned, and I ask for a vote.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Washington.

The question was taken, and the amendment was rejected.

Mr. FOWLER. Mr. Chairman, in subdivision (d) the bill provides practically for the maintenance of the condition of the river as to navigability as it was at the time when the dam was constructed; and if injury is done to the navigability of the stream after the dam has been constructed, the bill provides that the Secretary of War may assess a reasonable sum, such as is sufficient to restore the navigability of the stream to the condition it was before the dam was constructed.

Mr. ADAMSON. Mr. Chairman, what is the gentleman's amendment? I do not understand that he has offered any?

Mr. FOWLER. Mr. Chairman, I move to strike out the last word. This question arose in my mind: Suppose the navigation of the stream at the time the dam was constructed was not very good and not very secure and not very profitable. Is there anything in the bill that gives the Government the right to make a better condition of navigation than there was at the time when the dam was constructed, or does improvement to navigation, by virtue of the construction of the dam, cease? I raise this question seriously, because I have not been able anywhere to find a reservation of power to improve the navigation of the stream and make it better than it was at the time when the dams were constructed.

Mr. ADAMSON. Section 2 provides fully for that, at the bottom of page 2:

To protect the present and future interests of the United States, which may include the condition that the persons constructing or maintaining such dam shall construct, maintain, and operate in connection therewith, without expense to the United States, a lock or locks—

And so forth.

Mr. FOWLER. Yes; that is true; but the gentleman does not answer the question that I raised. I know in my own district on the Ohio River there are places where the navigation is not good. If a dam should be constructed across the river at that place, the bill provides for the maintenance of navigation up to the standard that it now is, but it does not provide for an additional improvement of navigation of the river.

Mr. ADAMSON. Why, the gentleman takes a single case where a lock and dam may not be necessary and where other conditions may be put on them. In cases where a lock and

dam is necessary or where there would be really some consideration demanded they will require them to put them in, and the language there is expressly put in that it is to protect the present and future interests of the United States in the stream.

Mr. FOWLER. I know that is true, that a lock is likely to be put in there if they destroy or prevent navigation of a stream, but you still do not rise to the magnitude of answering my question.

Mr. ADAMSON. What is the gentleman's question?

Mr. FOWLER. My question is, Do you preserve by this bill anywhere the right of the Government to step in when a dam has been built and make the navigation of the river better than it was at the time when the dam was built?

Mr. FERRIS. Will the gentleman yield?

Mr. FOWLER. Yes.

Mr. FERRIS. Does the gentleman think, in addition to the payment for the service to the Government and placing it back in its original state—does not the gentleman think that is onerous enough? I do not want this bill made so harsh it will not work.

Mr. FOWLER. But the gentleman does not make any progress by his question or by the answer.

Mr. FERRIS. Why not?

Mr. FOWLER. If it is a necessity to preserve the navigation of a stream, it is evident that the progress of time will demand a progress in the navigability of streams. Now, here is a provision in subsection (d) that only reaches a state of navigation or keeps up a state of navigation equal to that at the time when the dam was constructed, but maybe the navigation was poor at the time of constructing the dam and the Government might want to make it better.

Mr. ADAMSON. May I answer the gentleman further?

Mr. FOWLER. Yes.

Mr. ADAMSON. The gentleman must remember that in places where there is not fall enough to require a lock and dam nobody will find any inducement to put up a water-power plant. He has to have falls or there is no enticement to install a water-power plant at all, and the instance the gentleman mentions is an extreme one not likely to occur.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FOWLER. Mr. Chairman, I ask for an extension of five minutes.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent to proceed for five minutes. Is there objection? [After a pause.] The Chair hear none.

Mr. ADAMSON. Now, this subparagraph, I understand, is intended to meet just such a case as that where there is not much inducement to put in a dam, because there is not any fall and a lock may not be necessary.

Mr. FOWLER. Yes; but it may become necessary thereafter to navigate the river more extensively than it was navigated in the past. Now, you provide by subsection (d) for keeping up the standard of navigation which existed at the time when the dam was built.

Mr. ADAMSON. I understand the gentleman; but it is a case where there is not much inducement for water power. There may be a very small dam which could be built, and a very small lock. Now, you can not——

Mr. HULINGS. Will the gentleman yield?

Mr. FOWLER. I can not yield to two gentlemen at one time.

Mr. ADAMSON. Now, you can not expect to have a heavy investment in a thing that has not much prospect of a profit, because the project would not be constructed if it did not offer a profit.

Mr. FOWLER. The gentleman absolutely tries to throw off——

Mr. ADAMSON. No; the gentleman is mistaken.

Mr. FOWLER (continuing). And refuses to meet——

Mr. ADAMSON. No.

Mr. FOWLER (continuing). The issue squarely, because I know that conditions will arise in the future, if we continue to transport by water, wherein the Government will want to improve navigation and make it better than it is now and better than when the dam or dams are constructed.

Mr. ADAMSON. The gentleman has no right, and I do not think he means, to say that I am trying to evade anything.

Mr. FOWLER. Well, I do not.

Mr. ADAMSON. I am trying to understand and answer the gentleman.

Mr. FOWLER. But I do mean to say——

Mr. ADAMSON. The Government does not waive any right to do anything which belongs to it in a stream.

Mr. FOWLER. I am trying to get it distinctly——

Mr. ADAMSON. What does the gentleman wish to know?

Mr. FOWLER. The provision with reference to keeping up the state of navigation equal to when the dam was built. Now, in the future suppose the Government should want to make navigation better than it was at the time when the dam was built. The owner of the dam might cite this act and say it was the intent of Congress to keep up navigation to the standard only as it existed at the time the dam was built. Now, I want to preserve the right to make the navigation better than it was at the time when the dam was built if the wants of the people demand it.

Mr. ADAMSON. Well, now, if I understand the gentleman, the Government does not have to preserve the right to do anything it chooses to improve the navigation of the river. It can not make the grantee stand the expenses of it unless they put it in the contract.

Mr. FOWLER. That may be true, but there is this point in section (d). It might be construed by the owner of the plant or dam that it was the intent of Congress only to keep up the standard of navigation that existed at the time when the dam was constructed, and that no intent was contemplated to raise it to a greater efficiency. But the progress of time may require deeper water or a wider current or some other valuable improvement, and we should conserve the right to the Government without hinder.

Mr. ADAMSON. I do not think so——

Mr. FOWLER. And the Government has no right to step in with this plan, if it would interfere, to increase the navigability of the stream?

Mr. ADAMSON. In conditions other than those I have described in my answer other sections would control the situation.

Mr. FOWLER. Well, I can not understand it.

Mr. COOPER. Mr. Chairman——

Mr. HULINGS. Mr. Chairman, I want to ask the gentleman if section 3 on page 4 does not answer the question that he has asked?

Mr FOWLER. I did not think it did. I yield to the gentleman from Wisconsin [Mr. COOPER].

Mr. COOPER. I will say to the gentleman that the original consent of the Government, as I understand it, in that subdivision (d), is that he shall restore the navigation facilities to what they were when the consent was given.

Mr. FOWLER. That is exactly the point.

Mr. COOPER. On page 15 it is provided that Congress shall have the right to alter, amend, or repeal the act with relation to any dam whenever Congress determines that the conditions of consent have been violated. If you restore it, you shall leave the navigation as it was before.

The CHAIRMAN. All debate is exhausted on this question of moving to strike out the last word.

Mr. HUMPHREYS of Mississippi. Mr. Chairman, I move to strike out the last two words. I would like to ask the gentleman from Georgia [Mr. ADAMSON] a question, in answer to the criticism of the gentleman from Illinois [Mr. FOWLER]. I want to ask the gentleman if section 2 as amended by the committee the other day does not cure his objection?

Mr. FOWLER. That was by the Sherley amendment?

Mr. HUMPHREYS of Mississippi. No. Section 2 was so amended the other day as to provide that whenever in the opinion of the Chief of Engineers and the Secretary of War it was desirable, the contractor or the lessee, without expense to the United States, might be required to put in a lock or locks, booms, sluices, or any other structure or structures.

Now, as originally written it read:

> Which the Secretary of War and the Chief of Engineers or Congress then may deem necessary.

That has been amended so that it will read:

> At any time it may be deemed necessary.

So that the bill as it now stands provides that whenever in a future Congress the Secretary of War or the Chief of Engineers conclude that the interests of navigation require that other locks and other dams and other facilities for navigation should be put in they can be put in without expense to the Government. It occurs to me that that answers the gentleman's criticism entirely. Section (d) simply means that if the structures they have put there, in the opinion of the Government, become a menace to navigation, they can be ordered to remove them and restore the conditions just as they were to start with. We can do that, or we can require them to put in additional locks or dams. I do not think the gentleman's objection or criticism is tenable.

Mr. Chairman, I withdraw my motion to strike out the last two words.

Mr. RAINEY. Mr. Chairman, I desire to offer an amendment.

The CHAIRMAN (Mr. FOSTER). The gentleman from Illinois offers an amendment which the Clerk will report.

Mr. ADAMSON. Mr. Chairman, have we not spent enough time now on this section to limit the debate?

The CHAIRMAN. The Chair is not informed as to that.

Mr. ADAMSON. I will ask if we can not limit debate now? How much time does the gentleman from Illinois want?

Mr. RAINEY. I want only five minutes.

Mr. ADAMSON. How much on the other side?

Mr. MANN. Say five minutes.

Mr. ADAMSON. Mr. Chairman, I ask unanimous consent that debate on the section and all amendments thereto close in 10 minutes.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none. The Clerk will report the amendment.

The Clerk read as follows:

Amend, on page 7, by inserting after line 2 the following:

"No dam erected under this act shall be used as a railroad bridge or wagon road bridge, and no piers shall be built in any river in connection with the construction of any such dam to be afterwards used for bridge purposes; and all bridge piers heretofore constructed in any river in connection with any water-power dam shall be removed within such reasonable time as the Secretary of War may fix for said purpose."

Mr. ADAMSON. I would like to ask the gentleman if that is to prevent the company itself from using the dam for its own purpose in connection with the bill?

Mr. RAINEY. No, sir; not at all. On the contrary, there is no such objection to this amendment. This is intended to meet a condition that may arise at the building of any dam. In building the dam at Keokuk they so constructed the dam as to permit it to be used as a wagon road or railroad bridge, and they have built in the fore bay two piers to support a movable bridge of some kind that crosses the fore bay. It is a menace to navigation. They stand there in 40 feet of water, imperiling all the boats that come down the stream. The committee has already had the matter under consideration. This does not keep that company or any other company from applying to Congress to build a bridge on their dam, but that company did it without any such permission.

I have here a series of letters, written by steamboat owners on the Mississippi River, complaining of those piers and calling attention to the dangers of them. The boats of one line struck those piers, as its officers say in a letter here to me, seven times during the last season. This does not prevent the company from building a bridge, of course, for its own use.

Mr. Chairman, I reserve the balance of my time.

Mr. MANN. A point of order, Mr. Chairman. The gentleman can not reserve time under the five-minute rule.

Mr. RAINEY. The gentleman is right about that, of course.

I read from a letter written by the Streckfus Steamboat Line, referring to those piers. This is the principal company navigating on the upper river, and navigates packets all the way to St. Paul:

ST. LOUIS, *March 19, 1914.*

GEORGE M. HOFFMAN,
Major, Corps of Engineers, Rock Island, Ill.

DEAR SIR: Yours of the 9th regarding bridge piers in the fore bay at Keokuk.

Beg to explain that we have already gone on record as objecting most seriously to the present location of those piers as dangerous, this position being sustained by the report of every pilot and master of our steamers, as well as by other boats using that lock, and we can see now no way by which we can conscientiously agree to the arrangement proposed by the power company as outlined in your letter.

As before stated, the plan agreed upon (or agreed to under protest), by Capt. John Streckfus in January of last year in Maj. Keller's office was one of expediency only, as Maj. Keller said then that that was all he could get Cooper to do, and "it looked like that or nothing."

Neither the spirit nor the letter of that agreement was carried out by Mr. Cooper, and Maj. Keller wrote us in August that he did not intend to ask Cooper to put in the booms, etc.

Now, our boats struck those piers seven times last season, which is proof of our contention that they are dangerous.

The water there is 40 feet deep, and an accident could cause a great loss of life as well as property, and we certainly feel that those piers (at least the first two west of the center span) should be removed and the span on both sides then be protected by booms.

We wish to impress the fact that only two boat owners were consulted by Maj. Keller when the so-called agreement was made after a large number of pilots, masters, and owners had insisted upon a 300-foot opening in a straight line only the day previous at a hearing in Maj. Keller's office), and one of these owners, Capt. Blair, operates two small boats in that district, either one of which can go through the 175-foot draw broadside without striking.

While two of our steamers are over 75-foot beam and three of them over 250 feet in length, one of them 235 feet, and for this reason especially we feel that our protest should carry weight at this time after we have proved by one season's operation the danger of the arrangement and the error of the claim on the part of Mr. Cooper and Maj. Keller that it was safe.

In addition to this, the power company absolutely disclaims any liability whatever for damages or delays resulting from any cause incident to the construction at Keokuk and has refused payment of claims filed with them by this company.

Under these circumstances we do not feel that in justice to ourselves and the interests of river navigation in that section that boat property should in this way be exposed to risk and lives of passengers endangered by allowing those piers to remain in the middle of the navigable channel, pending the legalizing of them by congressional action.

Our understanding of the thing is that they are there contrary to law; and if this is so, we feel that boat property which must use that portion of the river should receive first consideration as to safety.

The Government booms referred to will unquestionably be urgently needed below the locks this season (as requested last year) to prevent other accidents similar to the one in which our steamer *Dubuque* tore a 20-foot hole in her hull by striking a drill boat after booms had been requested.

Those booms were never placed below the lock last season, but should by all means be put there now.

Should the old booms be used above the lock, new ones should be placed below.

In view of your having already recommended approval of the plan to leave the piers as they are, with certain booms added, we are to-day protesting to the Secretary of War and others at Washington against the adoption of the plan, and are urging the objections as stated in this letter.

We are sorry, indeed, to not be able to meet the power company's proposal in this instance, but we know the situation to be dangerous, and the proposed plan betters the present condition but little.

Our objections are not based upon theory at all, but upon the experience and reports of a dozen of the very best pilots in the profession, plus the repair bills for damages already sustained there by our boats.

Yours, very respectfully,

STRECKFUS STEAMBOAT LINE.

Mr. ADAMSON. Will the gentleman let me ask him another question?

Mr. RAINEY. With pleasure.

Mr. ADAMSON. The gentleman does not think that under the terms of this bill or any existing law such a bridge could be built on a dam without express authority of Congress, does he?

Mr. RAINEY. I do not think so, but my amendment limits the right of the Secretary of War to permit it to be done. He can not permit it except by the authority of Congress. If this is added here to the provisions which regulate the building of dams, then in the future the Secretary of War can not permit this to be done. It can not then be done without the permission of Congress. The Secretary of War has done it without the permission of Congress, but afterwards the company expects to come here and ask permission to complete their bridge, and this will probably occur in connection with any bridge that may be built.

Mr. BURNETT. Mr. Chairman, will the gentleman permit a question there?

Mr. RAINEY. Yes.

Mr. BURNETT. I did not catch from the reading exactly what the amendment provided. Is the gentleman sure that unless there is an expression in that amendment that it does not prevent the company from getting that permission, under the language the company would not be permitted to do that? Is it not so general, in other words, that it would prevent the company building a dam from even getting the permission? I suggest that possibly——

Mr. RAINEY. I do not so understand it. If my friend will call my attention to anything that will make it any clearer, I shall be glad to make it clearer.

Mr. BURNETT. I did not catch it distinctly.

Mr. RAINEY. I am trying to prevent the Secretary of War from authorizing this to be done unless the company first gets the consent of Congress. There is no dispute about the facts.

Mr. STEVENS of Minnesota. Mr. Chairman, the gentleman from Illinois says there is no dispute. I want to say that not one single statement that the gentleman made is correct. There is not one.

Mr. RAINEY. I got my view of the facts from the chairman of the committee. If I am mistaken, I must have misunderstood him.

Mr. ADAMSON. I have my views about allowing one company, one corporation, to put a bridge on top of a dam constructed by another corporation, but I do not see any use in putting an amendment in this bill to take care of it. In other words, I think we shall be able to take care of the trouble at Keokuk without the gentleman putting an amendment in this bill.

Mr. RAINEY. And the committee will try to do hereafter what I am trying to do now, to prevent the company from doing this very thing?

Mr. ADAMSON. I am trying, so far as I am concerned, to take care of the situation, and I am not going to vote for another corporation to put a bridge on top of that dam.

Mr. RAINEY. Nor am I going to vote for another corporation to be allowed to put a bridge on top of that dam. It ought not to be permitted to do it without the permission of Congress. That is the only thing I want to research.

Mr. ADAMSON. The matter is before our committee, and we are at work on it as well as we know how, and we will work it out all right. If the gentleman will only restrain his impetuosity I think we shall work it out all right.

Mr. RAINEY. The gentleman should restrain the impetuosity of the War Department in this regard.

Mr. ADAMSON. I think they will work it out.

Mr. RAINEY. They do not seem to be able to.

Mr. ADAMSON. The gentleman says he is familiar with my attitude. I just wanted to say what my attitude was.

Mr. BURNETT. Mr. Chairman, I would like to have a reading of the amendment.

The CHAIRMAN. Without objection, the amendment will again be reported.

The Clerk read as follows:

Amend, on page 7, by inserting after line 2 the following: "No dam erected under this act shall be used as a railroad bridge or a wagon-road bridge, and no piers shall be built in any river in connection with the construction of any such dam to be afterwards used for bridge purposes; and all bridge piers heretofore constructed in any river in connection with any water-power dam shall be removed within such reasonable time as the Secretary of War may fix for said purpose."

Mr. RAINEY. After the words providing for the bridge I ask unanimous consent to amend it by inserting the words "unless the consent of Congress shall be had therefor."

The CHAIRMAN. The gentleman from Illinois asks unanimous consent to modify his amendment. Is there objection?

There was no objection.

Mr. STEVENS of Minnesota. Mr. Chairman, does the gentleman from Georgia [Mr. ADAMSON] control the time?

Mr. ADAMSON. I understand the gentleman from Minnesota has five minutes.

Mr. STEVENS of Minnesota. Mr. Chairman, a moment ago I made the statement that the gentleman from Illinois [Mr. RAINEY] was in error about the facts. Our subcommittee went to Keokuk last winter. I found that I sympathized with the position of the gentleman from Illinois. The district which I have the honor to represent is vitally interested in the navigation of the Mississippi River, and some of our people have complained about the very thing which was described by the gentleman from Illinois. So I went there determined to find out exactly what the facts are and to do the best I could to promote and protect navigation. While we were there we met the representatives of all the steamboat lines and talked over with them what ought to be done. They told us that if the pier should be protected by booms they would be satisfied. They told us so at that time there.

Now, the pier has never been used as a public bridge or for a public bridge. It has always been used as a part of the plant for the construction of the dam. In order to get its men and its material back and forth from the Iowa shore to the dam under construction a pier was placed in the fore bay, and a temporary bridge was constructed from the Iowa shore to the main part of the dam and the power house, and upon that pier a temporary bridge was constructed. I understand that temporary bridge has been torn down. It never has been used as a highway bridge for the public, and it never has been used as a railway bridge or for any such purpose except work trains, and it has never been used by the public or anybody else or for anything else except for the construction of the dam.

Mr. RAINEY. Mr. Chairman, will the gentleman yield?

Mr. STEVENS of Minnesota. Yes.

Mr. RAINEY. I will ask the gentleman if it is not true that the piers are still there, and that before the gentleman's committee there is pending a bill asking permission to use them?

Mr. STEVENS of Minnesota. Yes. The gentleman is correct. What is known as the Interstate Bridge Co., whatever it may be, composed of the citizens of Keokuk, did ask us to authorize that dam to be used as a bridge. The bill has been pending before our committee and has not been acted upon. There is a bridge below which it is contended satisfies the demands of the situation, so the bill has not been acted upon. What the future may bring forth no one can foretell, but I can assure this committee that nothing will be permitted which will obstruct navigation. That will be our primary purpose.

The gentleman made the statement the other day that the Government was forced to protect the pier by booms at its own expense. I think that was incorrect. Representatives of the bridge company told us they would do it for themselves. So I requested the other day the Chief of Engineers to forward to me a statement as to the situation, and I will read it. He forwarded the following:

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, July 27, 1914.

Hon. F. C. STEVENS,
United States House of Representatives.

SIR: In response to your oral request, I have the honor to inclose herewith a copy of a telegram just received from Maj. Hoffman, the district engineer officer at Rock Island, Ill., relative to installation of booms in fore bay of lock at Keokuk, Iowa.

Very respectfully,

DAN C. KINGMAN,
Chief of Engineers, United States Army.

Then I will read this telegram:

ROCK ISLAND, ILL., *July 25, 1914.*

CHIEF OF ENGINEERS, UNITED STATES ARMY,
Washington, D. C.:

Booms have been installed in fore bay Keokuk power plant as per my indorsement department letter of March 2, 35003, and map therewith, apparently perfectly satisfactory to steamboat line; no complaints received. Booms are old ones, belonging to Government; were borrowed, repaired at considerable cost, and installed by power company without any expense to United States.

HOFFMAN, *Engineer.*

I judge from this that the fact is that part of the old booms that belonged to the United States were installed and were taken over and fixed up by the power company, so that the gentleman from Illinois is correct to that extent; and to that I wish to change my statement that the old Government boom was installed by saying that it was fixed up at the expense of the power company, and has since been installed at the expense of the power company, and is now there at their expense.

Mr. MANN. Mr. Chairman, will the gentleman yield?

Mr. STEVENS of Minnesota. Certainly; I yield.

Mr. MANN. I understood my colleague to state the other day—and I am quite sure that he did—that this installing of booms was to be done at the expense of the United States.

Mr. STEVENS of Minnesota. Yes; he made that statement, and I am here showing what the exact facts are by the official report, and that is what the House wants to know.

Mr. RAINEY. I suppose that the main cost is the cost of booming. Merely tying to the piers does not amount to anything. The gentleman says he does not know of any complaints. I have a number of letters complaining as to the width of the span and saying that it ought to be 300 feet.

Mr. STEVENS of Minnesota. I have had no complaints, and evidently the engineers have not had any.

The CHAIRMAN. The question is on the amendment of the gentleman from Illinois [Mr. RAINEY].

The question was taken; and on a division (demanded by Mr. RAINEY) there were—ayes 5, noes 14.

Accordingly the amendment was rejected.

The Clerk read as follows:

SEC. 5. That the operation of navigation facilities which shall be constructed as a part of or in connection with any such dam, whether at the expense of such grantee or of the United States, shall at all times be subject to such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by any such dam, as shall be made by the Secretary of War and Chief of Engineers, and in the use and operation of such navigation facilities the interests of navigation shall be paramount to the uses of such dam by such grantee for power purposes. Such rules and regulations may include the maintenance and operation by such grantee, at its own expense, of such lights and other signals as may be directed by the Secretary of War and Chief of Engineers and such fishways as shall be prescribed by the Secretary of Commerce, and for failure to comply with any such rule or regulation such grantee shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than $500 for each month's default, in addition to other penalties herein prescribed or provided by law.

Mr. ANDERSON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Minnesota offers an amendment, which the Clerk will report.

Mr. ADAMSON. Mr. Chairman, I should like to see if we can agree on time for debate on this question.

Mr. ANDERSON. I think we had better have the amendment read first.

Mr. ADAMSON. There are several amendments to be offered. I do not want to count the time used in reading the amendments.

Mr. FERRIS. May I inquire what the gentleman's amendment is?

Mr. ANDERSON. Let it be read.

Mr. ADAMSON. I ask unanimous consent that debate on this paragraph and amendments thereto conclude in 20 minutes.

Mr. FERRIS. I hope the gentleman will withdraw that request until this amendment is read.

Mr. ADAMSON. I withdraw the request at the suggestion of the gentleman from Oklahoma.

The CHAIRMAN. The Clerk will report the amendment offered by the gentleman from Minnesota [Mr. ANDERSON].

The Clerk read as follows:

Amend, section 5, by inserting after the word "that," in line 3, on page 7, the following: "the right is hereby reserved to the United States to construct, maintain, and operate, in connection with any dam built in accordance with the provisions of this act, a suitable lock or locks, booms, sluices, or any other structures for navigation purposes and."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota.

Mr. ADAMSON. What is the necessity for this amendment? We already have it in the law.

Mr. ANDERSON. I should be glad to have the gentleman point out where it is in the law.

Mr. MANN. It is in the existing law, but not in this bill.

Mr. ANDERSON. It is in the existing law, but not in this bill.

Mr. ADAMSON. I had an idea that it was in the bill.

Mr. ANDERSON. No; if the gentleman will remember, the other day we adopted an amendment which reserved to the Government the right to require the grantee to construct locks, booms, sluices, and so forth, at its expense, but we did not reserve to the Government itself the right to construct a lock, boom, sluice, or anything of that kind in connection with the dam of the grantee, and the only purpose of this amendment is to restore the existing law, reserving to the Government the right itself to construct a lock at its own expense in connection with the dam of the grantee. It is conceivable that conditions might arise under which it would not be proper or fair to require the grantee to build a lock, sluice, or boom at its expense, and the purpose of this amendment is to permit the Government to build it under such conditions.

Mr. ADAMSON. If the gentleman will look on page 3——

Mr. STEVENS of Minnesota. Pages 2 and 3.

Mr. ADAMSON. I think he will find it all adequately expressed. We prescribe that the Government may require it done by the grantee, because, beginning at line 7, page 3, we provide that—

Whenever Congress shall deem such facilities necessary, the persons owning such dam shall convey to the United States, free of cost, title to such land as may be required for such constructions and approaches.

Mr. ANDERSON. But that merely has reference to the banks, and the title to the land for such purposes.

Mr. ADAMSON. I understand that.

Mr. ANDERSON. It does not reserve to the Government the right to construct the dam.

Mr. ADAMSON. You do not need authority for the Government to construct a dam whenever it wants to.

Mr. ANDERSON. That is so; but where you have granted to the grantee the right to build a dam the Government can not go in afterwards and build a lock itself in connection with such a dam unless it reserves the right to do so.

Mr. ADAMSON. Let the amendment be reported again.

The CHAIRMAN. If there be no objection, the Clerk will again report the amendment.

The amendment of Mr. ANDERSON was again read.

Mr. ADAMSON. I do not think it is necessary at all, but I see no objection to it.

Mr. MANN. Will the gentleman yield to me?

Mr. ADAMSON. Certainly.

Mr. MANN. In section 2 there is a provision in regard to the construction of locks, booms, sluices, or any other structure or structures, and so forth. Then following that is a provision that the persons owning such dams shall convey to the United States, free of cost, title to such land as may be required for such constructions and approaches. Now, if the Government acquires the title to the land for the construction of a lock, why do we have to ask permission of the grantee that we may construct the lock?

Mr. STEVENS of Minnesota. Let me ask one further question. In section 2 it is provided—

That as a part of such approval such conditions and stipulations may be imposed as the Secretary of War and the Chief of Engineers may deem necessary to protect the present and future interests of the United States, which may include the condition that the persons constructing or maintaining such dam shall construct, maintain, and operate in connection therewith, without expense to the United States, a lock or locks, booms, sluices, or any other structure or structures which the Secretary of War and the Chief of Engineers or Congress then may deem necessary in the interests of navigation.

Now, that, attached to the statement that the gentleman has just read, gives all the authority that is necessary, does it not?

Mr. MANN. We thought it did when we drew the original act.

Mr. ANDERSON. But you put the reservation in the original act.

Mr. MANN. It is put in here, but in a different place; that is all.

Mr. STEVENS of Minnesota. It ought to be there.

Mr. MANN. If we give the right to the grantee to build a dam and say that if we construct a lock the grantee shall furnish us with the title to the land that we think necessary for the construction of the lock, and we get the title to the land, why do we have to ask the grantee for license to build the lock?

Mr. ANDERSON. We might have to tear up half of his dam.

Mr. MANN. That is left to the Secretary of War. If we get the title to the land, it does not require the consent of anybody else.

Mr. ANDERSON. It seems to me that it does require the consent of the grantee. If you are going to destroy his property, you have to reserve the right to do it, and if you intend to change his property you must reserve that right. That is all my amendment does.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota.

The question was taken, and the amendment was agreed to.

Mr. DILLON. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 7, line 19, after the word "shall," strike out the following: be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than" and insert the following: "pay damages for the breach thereof, and in addition thereto a penalty of."

Mr. ADAMSON. That is a bad mixture of criminal and civil law, and I am against it.

Mr. DILLON. If this amendment is adopted, it will eliminate from the section the criminal penalty and fix in lieu thereof a penalty for the violation of the contract. If I understand the purport of this bill, it makes a grant on certain conditions of certain privileges. It is a grant of a franchise, and a franchise is a contract. I see no necessity of trying to make a criminal act when the elements of a crime do not exist.

I would like for the gentleman from Georgia [Mr. ADAMSON] to point out where there is any act of criminality in this bill. It does not say that it must be intentionally done; it does not say that it must be maliciously done; it does not say that it must be a malicious destruction of property. There is not a single criminal act specified, and yet it says that a man is guilty of a criminal offense simply because he is unable to carry into effect a contract. It might just as well be said that a man who executes a promissory note is guilty of a misdemeanor when he fails to pay it. The mixture of criminal and civil law is in the bill, and there is no necessity of trying to make an act a crime when it is not a crime. Congress, or any legislative body, has not the right to say that an act is criminal when it is not an offense against the public.

Again, the Government has reserved its right in various ways. It has the right of mandamus, the right of injunction; it can go into court and exercise the right at any time it may choose to do so by these remedies. I want to say to the gentleman that, in my judgment, he can not convict anybody simply because he is unable to comply with his contract.

Mr. MANN. Will the gentleman yield?

Mr. DILLON. In a moment. For instance, suppose a party became insolvent, would you say he was a criminal because he could not comply with his contract? These are contractual relations, and it is not a criminal act.

Mr. ADAMSON. Upon what language does the gentleman base his opinion or construction making this a contract?

Mr. MANN. It refers to the lights, other signals, and fishways, and so forth.

Mr. DILLON. These are elements in the specifications and plans.

Mr. MANN. The gentleman is entirely mistaken as to its being a contract.

Mr. DILLON. This simply specifies the plans that may be promulgated and become a part of the contract.

Mr. MANN. Will the gentleman yield?

Mr. DILLON. Yes.

Mr. MANN. Suppose this was enacted into law to-day without this provision in it—does the gentleman doubt our authority to put it in a separate act to-morrow, requiring them to furnish lights, fishways, and so forth, under penalty for violation?

Mr. DILLON. You should go further than you do in this connection and put some act of criminality into it, because this is contractual; it does not belong to the Criminal Code.

Mr. ADAMSON. This section does not mention a contract at all.

Mr. DILLON. This is a contract. A grant is a contract.

Mr. ADAMSON. This section is an independent proposition that requires rules and regulations to be made by the War Department and makes it a crime if they are violated by the owner of the dam. There is no contract about it or in it.

Mr. DILLON. If the gentleman will allow me to make a further suggestion, this is a grant on the part of the Government. Now, the grantee is unknown. It is a float, so to speak; but when the grantee is found and comes up and says, "I will comply with these conditions," then he becomes the grantee.

Mr. ADAMSON. He does not have to say so under this section.

Mr. DILLON. Then you have the grantor and the grantee, and you have a contract without any element of criminality in it.

Mr. ADAMSON. We make laws to cover unborn generations. They do not agree to comply with them; but if they do not, they are punished.

Mr. DILLON. This is a contractual relation, but it is not a contractual relation until the other party is found who will take up the grantee part of it.

Mr. ADAMSON. This does not depend on contractual relations; it says that when they do not such things as the Secretary of War shall require they shall be convicted.

Mr. DILLON. The Supreme Court of the United States decided in the Dartmouth College case many years ago that a franchise or grant of privilege is a contract.

Mr. MANN. Mr. Chairman, my friend from South Dakota is entirely mistaken.

Mr. COOPER. The "grantee" is in the bill.

Mr. MANN. There is no grantee in this bill.

Mr. DILLON. There will be. Let me ask the gentleman when the party who accepts these conditions comes in, then have you not your grantee?

Mr. MANN. Why, certainly. This is not a contract. This is a provision authorizing the provisions under which a contract may be entered into hereafter. First, it may be an act of Congress giving authority to construct a dam, or the authority may be obtained from the Secretary of War without an act of Congress in certain cases, and this fixes the terms of the contract when it is entered into; but this section has nothing to do with the contract. This section is a regulation of commerce, and on all or any of the navigable streams wherever an obstruction has been or is hereafter placed we have the right to require lights and signals. We have the right to require fishways. We do not get that under a contractual relation at all. We get that under the power to regulate commerce.

While I was helping to bring such bills out of the Committee on Interstate and Foreign Commerce, we passed a provision requiring everybody who now or heretofore had a bridge or other obstruction over or in navigable waters to furnish such lights as should be authorized by the Lighthouse Bureau and under penalty of the law. If we shou'd pass this law to-day, and grant a permit to some one to-morrow, and he should build a dam the next day, then the next day after that we could pass this criminal provision of the law as a new law requiring lights. We want a criminal provision of the law to make people put lights and signals up. Suppose there is a great dam or a great bridge and a steamboat runs into it for lack of a light. It is very little satisfaction to say that you can sue the company. You want to be able to convict for a criminal offense.

Mr. COOPER. Mr. Chairman, when I said the word "grantee" was used in the bill, I was looking straight at the bill, and I find the word "grantee" in line 14 and also in line 19.

Mr. MANN. I did not doubt that the word "grantee" was in the bill. I knew that it was.

Mr. COOPER. If the gent'eman did not doubt it, he has a queer way of expressing his acquiescence in my views. [Laughter.]

Mr. MANN. I did not say the word "grantee" was not in the bill.

Mr. COOPER. Because he absolutely contradicted me. He said the word "grantee" was not in the bill.

Mr. MANN. Oh, I made no such statement.

Mr. COOPER. Then I can simply shake my hand and look up and say, "I appeal to the RECORD."

Mr. MANN. Well, appeal to the RECORD. I shall not change it.

Mr. COOPER. Of course, the gentleman did not mean to say it, but he said it.

Mr. HUMPHREYS of Mississippi. He said it all right.

Mr. COOPER. I have the statement of the gentleman from Mississippi, and with him I am a clear majority on this proposition. [Laughter.]

Mr. Chairman, this provides that the grantee shall be guilty of a misdemeanor. I have not studied this very closely, but could not the grantee in this case be a corporation, I will ask the gentleman from Georgia?

Mr. ADAMSON. I do not think there is any doubt about that. It could be fined.

Mr. COOPER. But the gentleman from Illinois said it would not amount to very much to collect the money, but that "we propose to imprison." How are you going to imprison a corporation?

Mr. ADAMSON. If the gentleman from Wisconsin will permit, I suggest also that the remedy suggested by the gentleman from South Dakota [Mr. DILLON] exists anyway by law. If anybody is damaged by violation of this law, a suit can be brought.

Mr. COOPER. Yes; but I did not understand the force of the argument of the gentleman from Illinois [Mr. MANN] that the mere collection of money would not amount to anything where a steamboat, because of the absence of a light, collided with an obstruction in a river. He said we wanted something more than the collection of money.

Mr. ADAMSON. I understood him to mean a suit for damages would not be a suffic'ent satisfaction.

Mr. MANN. Mr. Chairman, I did not say anything about "imprisonment." I do not change my remarks as they are made to the reporter. I did not say the word "grantee" was not in this bill, and I do not change my remarks, notwithstanding my friend from Wisconsin [Mr. COOPER] and my friend from Mississippi [Mr. HUMPHREYS]. I said there was no grantee in this bill. I repeat it for the benefit of the two gentlemen. If they can find a grantee in this bill, I will take it back.

Mr. COOPER. Mr. Chairman, what I said was that this was the language of the bill. I did not say there was not any grantee. I said that was the language of the bill. The gentleman disputed that statement.

Mr. ADAMSON. Let us have peace.

Mr. DILLON. Mr. Chairman, I would like to ask the gentleman from Illinois a question. He says there is no grantee in this bill. Will there not be a grantee when one is found to comply with the conditions?

Mr. MANN. There will be a grantee, undoubtedly, regulated by the provisions of the bill. There can be no dispute about that.

Mr. DILLON. He becomes a grantee when he complies with the conditions of the bill.

Mr. MANN. Undoubtedly he becomes a grantee.

Mr. DILLON. Does the gentleman think a man should be declared to be a criminal when he is without notice of what the Secretary of War may promulgate in reference to rules and regulations?

Mr. MANN. I do not think he could be without any notice.

Mr. DILLON. But you are making him a criminal without giving him notice.

Mr. MANN. Oh, no; not at all. He will not have any notice of this bill, except the theoretical notice of the law, but it is his business to know what signals are required to protect navigation from the obstructions that he puts in the river, and if he does not learn them he takes his chance of punishment for it.

Mr. ANDERSON. Mr. Chairman, I move to strike out the last word of the amendment.

Mr. ADAMSON. Mr. Chairman, I ask unanimous consent that all debate on this section and amendments end in five minutes.

The CHAIRMAN. The gentleman from Georgia asks unanimous consent that all debate on this section and amendments thereto close in five minutes. Is there objection?

Mr. ANDERSON. Reserving the right to object——

Mr. THOMSON of Illinois. Reserving the right to object——

Mr. ADAMSON. We have had over half an hour of debate on this section.

Mr. THOMSON of Illinois. I have not had half a minute.

Mr. ANDERSON. Mr. Chairman, I simply want to direct the attention of the chairman of the committee to a situation which seems to me to exist in both this section and the following section.

Mr. MANN. Had we not better dispose of this amendment? Mr. Chairman, I ask for the regular order.

The CHAIRMAN. The regular order is the gentleman from Minnesota.

Mr. MANN. No; there is an amendment pending.

The CHAIRMAN. The gentleman from Minnesota moved to strike out the last word of the amendment, and that gave him the floor for five minutes.

Mr. MANN. I think we ought to dispose of the amendments one at a time as we get to them.

Mr. ANDERSON. If the gentleman wants to dispose of the amendment, I am perfectly willing to withdraw my motion; but I do not want to be cut off.

Mr. MANN. That will not cut the gentleman off.

The CHAIRMAN. The question is on the amendment offered by the gentleman from South Dakota.

The question was taken, and the amendment was rejected.

Mr. ANDERSON. Mr. Chairman, I move to strike out the last word.

Mr. ADAMSON. Mr. Chairman, can we get an agreement on this section and amendments?

Mr. ANDERSON. I shall want but a few minutes. I merely want to call the attention of the committee to a situation which exists in both this section and section 7.

Mr. ADAMSON. Mr. Chairman, I ask unanimous consent that debate on this section and all amendments thereto end in 25 minutes.

The CHAIRMAN. The gentleman from Georgia asks unanimous consent that all debate on this section and all amendments thereto close in 25 minutes. Is there objection? [After a pause.] The Chair hears none.

Mr. ANDERSON. Mr. Chairman, my purpose in rising is to call the attention of the chairman and other members of the committee to a situation which arises both under this section and section 7. In the subsequent section the committee has changed the language of the existing law which provides that "any person who shall fail to comply with the lawful order of the Secretary of War" to "any grantee who shall fail or refuse to comply." Now, both section 5 and section 7 are penal sections, and they only apply to the persons who are specifically designated in them. What I want to direct the attention of the committee to is this: Under either of those sections would it be possible to convict an assignee of a grantee under this act? He is not mentioned, the bill does not apply to him. The section is penal, and it would only apply to persons specifically denominated by the section itself; and it seems to me that the word "grantee" in both of these sections to conform with the general policy of the law ought to be changed to "person." The bill itself defines persons so that it applies to both singular and plural and includes incorporations, companies, and associations.

Mr. ADAMSON. Has the gentleman noticed the language at the top of page 10, which reads—

whether by voluntary transfer, judicial sale, or foreclosure sale or otherwise, shall be subject to all the conditions of the approval under which such rights are held, and also subject to all the provisions and conditions of this act to the same extent as though such successor or assign were the original owner hereunder.

Mr. ANDERSON. Well, that may be applicable, so far as contractural relations are concerned.

Mr. ADAMSON. It says "the provisions of this bill."

Mr. ANDERSON. I want to know whether it is applicable to the penal provisions of the act. I confess I am somewhat in doubt about the proposition myself, and I merely wanted to direct the attention of the committee to it.

Mr. RAINEY. Mr. Chairman, I desire to offer the following amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

After the word "purposes," in line 13, of page 7, strike out the period, insert a comma, and add: "the storage of water back of any such dam shall not be permitted to be accomplished in such a way as to interfere with the natural flow of the waters of the stream in which such dam is located, but at all hours of the day and night there shall be permitted to pass through or over such dam the ordinary natural flow of said stream: *Provided*, That the interests of navigation require the entire ordinary flow of said stream in the day and in the night."

Mr. RAINEY. Mr. Chairman, I ask unanimous consent to proceed for 10 minutes.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent to proceed for 10 minutes. Is there objection? [After a pause.] The Chair hears none.

Mr. ADAMSON. The agreement included 10 minutes to the gentleman.

Mr. RAINEY. I thank the gentleman.

Mr. Chairman, this amendment, if adopted, does not interfere with the storage of water in rivers where storage may be accomplished without interfering with navigation. This amendment is offered to reach a condition in the Mississippi River and perhaps in other rivers. At Keokuk the company there has been permitted by an order of the War Department to store water at night and to materially stop the flow of the Mississippi River. They did it last year and they are doing it this year, in order to enable the company to have more water to use in the daytime. This is desirable, of course, considered from the standpoint of generating as much power as the river will produce, but it has at that point a disastrous effect upon navigation. I want to read what some officers of steamboats and some steamboat companies navigating this river have to say about this storage of water. Frequently vessels navigating below the dam have great difficulty in reaching the dam, especially in the nighttime. I read from the Waterways Journal, referring to an article in the Keokuk Gate City. The Waterways Journal says:

If the Keokuk Gate City had had a representative with us to go to bed on the steamer *Keokuk* on the morning of September 12, 1913, at 3 a. m., he would have found the boat afloat. On arising at 6 a. m. the boat was hard aground, as was the Streckfuss Line steamer *Dubuque*. That morning we saw launches out on the river at 3 a. m., and at 6.30 a. m. they were high and dry. The writer, manager of the Waterways Journal, will make this affidavit. We will also swear that the stage of water at Alton, Ill., is also affected by the storage of water by the power company at night.

Again, I want to read from a letter written by the traffic manager of the Streckfuss Steamboat Line to me, of recent date:

The increase and reduction of the flow having caused unusual raising and lowering of the water level, which at the same time affected the current in the river in such way as to give an unusual speed to the flow during some hours of the day and to produce practically a slack-water channel during other hours.

Our boats have frequently been delayed by reason of this variation in the channel, some of them having been left aground at their landings through sudden fall in the water level.

In one instance it was necessary to hold one of our big St. Paul steamers five hours at the lock until enough water could be allowed to pass the dam as to raise the channel below the dam some 18 inches.

The principal actual delays were brought about by the shoal conditions at certain times of the day, when the minimum quantity of water was allowed to pass through the dam.

As to complaints regarding the method of operating the dam, would explain that these complaints have borne upon the channel conditions produced by the operation of the dam, but not upon anything pertaining to the dam itself.

We discontinued our St. Paul service about two weeks earlier than anticipated this season, due to the uncertainty of getting through the Keokuk district without injury or delay to steamers, and because of these delays having come about with considerable frequency during the month of August, we deemed it unwise to attempt to handle any material freight business, as the increase draft of vessels so laden seem to assure further delays and possibly injury in the Keokuk vicinity.

We know of no additional boats under construction or contemplation for use on the upper river through any affect the completion of the dam may have had upon navigation.

The dam has benefited navigation for a distance of only about 40 miles. Above this it has had absolutely no affect upon the channel.

This company operates five boats in the district between St. Louis and St. Paul, and we have not been able this season to find any indication of benefit by reason of increase to our business in which the Keokuk Dam or power plant could have possibly contributed anything by way of betterment.

The completion of the dam will have no effect upon navigation on the river as regards either the volume or the rates for the reason, as we already stated, it has so far influenced the river above by way of betterment for a distance of 40 miles, and during the past season it has unquestionably proved a serious interference with navigation for approximately a like distance below Keokuk.

The fact of difficulty or interference with navigation at any point between St. Louis and St. Paul interferes with the traffic over the entire area, for the reason that in this section of the country business originates below Keokuk and is destined for points above Keokuk, or vice versa, and if a steamer has difficulty in getting through the channel to Keokuk, the result is the same as though the river were in that condition for its entire length.

Your letter does not touch upon the other difficulty at Keokuk, which gives indication of being one of the most unfavorable and undesirable conditions bearing upon navigation at Keokuk.

By this we refer to the bridge piers which have been placed across the channel in the fore bay, between the power house and the Iowa shore at Keokuk.

These piers are most unfortunately arranged and have been in position all this season, practically without protection work, and have seriously endangered steamers a number of times this season through their unfortunate location, mainly and partly through the absence of protection work.

Our steamers have struck these piers seven times, and in each instance narrowly escaped a most serious accident.

We seem this season to have been unable to make these conditions clear to the proper authorities or to the power company.

This, notwithstanding the fact that we strenuously objected to the arrangement before navigation opened and subsequent experience during the season, seems to have borne out our contentions perfectly.

I read again from a letter written by A. V. Fetter, who operates a boat on the Mississippi River, as follows:

In our opinion navigation of the river has not been improved. We do not know of any vessels having to wait for a rise of water before being able to make the locks. Navigation above the dam has been improved, but below the dam it is more difficult because of the various stages of water each day.

I read from a letter of recent date written by Bert Edwards, a river pilot:

I think that holding the water back at night this summer caused the river between St. Louis and Keokuk to be in bad shape, because the rising and falling caused the channel to fill up; a fall of any length causes the channel to cut out, but as soon as a rise comes the channel stops cutting and fills up.

Always before in low water the channel was very close, but good except in a few wide places. This summer there was no good channel below Keokuk except in a few places where the water has always been deep.

There is no question in my mind but what the addition of more turbines and the holding back of more water will not only interfere with but stop all navigation of boats of any size between Keokuk and St. Louis when there is less than 2 feet on the gauges.

I think that the holding back of the water affected the channel down to the mouth of the Illinois River. I am going by my experience in former seasons, when the river was as low and lower than this season. I mean the reading of bridge gauges, not by condition of channel, as the channel was very bad this summer with the gauges showing more water.

I can not say that I noticed any sudden change in the stage of water. But our time always got us through the lock before dark, and the first night out of St. Louis we were too far below to have the sudden change affect the channel, as I am told it did above.

The difficulties of navigation this summer were caused by the channel being very bad; or, in other words, it did not cut out when the water fell as in former seasons.

The bridge piers above the lock should be placed so that the dam span would be in line with the lock.

As the bridge piers are now, also the opening in the ice breaker, makes it very bad with a big boat or a tow. You have to come in headed for the power house and then turn to the right to get into the lock, and if the wind is blowing off the Iowa shore it is almost impossible to keep from striking the power-house wall. The only protection I have seen on the bridge piers this summer was put there to protect the piers, not the steamboats, as they offered no protection to boats.

Yours, respectfully,

BERT EDWARDS,
Pilot Steamer "St. Paul."

I read an extract from a letter of the Interstate Material Co.—a letter written by Capt. Dipple, of that company—a company which operates boats on the Mississippi River:

Boats had no difficulty in navigating before this improvement was brought about by the dam, but they will not be able to navigate below the dam if the water is held back at night during low-water period.

We appreciate your effort in protecting the river and will be glad to furnish you any information that may help you.

Again, I read from a letter of Harry F. Lancaster, pilot of the steamer *Dubuque*, written to me:

ST. LOUIS, *October 10, 1913.*

GENTLEMEN: The question has been brought before me as to the effect the power dam at Keokuk, Iowa, has on the river below Keokuk.

I can say that the water at Keokuk, Iowa, has a fall of 18 or 20 inches during the time the power company holds the water back at night. I know this to be a fact, as I have seen it; and was pilot on the steamer *Dubuque* this season for five months; and this steamer made three landings a week at Keokuk; and in the morning the steamer *Dubuque* had to back for some time to free herself from being aground at that landing. This has delayed steamer each time.

At times we have landed or tried to land so that we could place the steamer gangplank on the runway; but this was impossible to do, because of the water having lowered so as to cause the gangplank to come 5 or 6 feet short of reaching the water's edge.

About the power company's bridge above the lock:

This bridge, I can say, is one of the worst obstructions to steamboats I ever saw on the Mississippi River, and if this bridge opening is not straightened or taken out it will cause some great disaster, loss of life or boat.

This bridge is hard to run at any time, wind or no wind, as these large boats flank a great deal in that deep and dead water.

If this bridge was in line with the lock and the opening at the ice breaker it would be safe for steamboats to run.

Steamer *Dubuque* damaged her starboard guard on one of these piers while she was trying to back through, and I know that it was not the fault of the pilot. I myself was the pilot on duty, and I took every precaution I could, but the wind caught me and blew me on to the Iowa side pier, and the captain and the owners of the *Dubuque* will state this as the fact.

Yours, truly,

HARRY E. LANCASTER,
Pilot Steamer "Dubuque."

I read from a letter written by C. H. Magee, captain of the steamer *Quincy*, operating on this part of the river:

STRECKFUS STEAMBOAT LINE, *St. Louis, Mo.*

GENTLEMEN: Your letter of the 11th received, and in regard to steamer *Quincy* being delayed at the entrance to the lock, will say that we tried three times to enter the lock, but couldn't get over, as we hit the rocks that were blasted out. We also sounded and couldn't find more than 3 feet.

We then tied up and got Maj. Meigs out and he had the power company open up the wickets and raised the water 18 inches, and we got over all right.

Yours, truly,

C. MCGEE,
Captain Steamer "Quincy."

Mr. ADAMSON. Mr. Chairman, will the gentleman tell of the date of that statement?

Mr. RAINEY. That was dated in October last.

Mr. ADAMSON. Have not satisfactory regulations been adopted and acquiesced in since that?

Mr. RAINEY. I did not understand it so.

Mr. ADAMSON. That is my impression.

Mr. RAINEY. I understand the storing of the water still goes on.

Mr. ADAMSON. I am talking about the use and regulation of the dam so as to provide for the flow of water below.

Mr. RAINEY. I do not understand that there have been any changes. At any rate, if there have been, there can not be any objection to this amendment, because it seeks to reach only such storage of water as affects navigation and is advisory in its character, in order to produce some better regulations hereafter, if water is to be stored at night, than there has been heretofore.

Now, I have a number of letters from companies operating on the river, as to the varying tides in the river below the dam caused by storing the water there in the nighttime, in order to enable this company to produce 104,000 horsepower, which is all they can produce even if permitted to store the way they have been permitted to store heretofore. That sort of storage, if it interferes with navigation, ought not to be permitted, and if this is a bill to promote navigation, as the committee insists it is, then, in connection with the statement in this bill which comes just ahead of this amendment, to the effect that the interests of navigation shall be paramount, there can be no objection to an amendment of this character.

The CHAIRMAN. The question is on the amendment.

Mr. STEVENS of Minnesota. Mr. Chairman, the gentleman's amendment goes to the root of the difficulty which always has existed and always must exist in the use of dams for water power, and navigation also, in navigable streams, and if such an amendment be adopted of course it would completely end the construction of any more dams in any navigable streams in this country and destroy those which now are so used.

The situation is this: I have had several years of experience in such a controversy, as I narrated to the committee the other day, upon the St. Croix River, between Minnesota and Wisconsin, of which the western part is in my district. Every dam which is constructed in a navigable stream where navigation exists necessarily impedes the navigation somewhat. Both navigation and power want all the water. Both of them can not have all the water. There must be, in order that both shall exist—and both ought to exist in the proper use of a stream—a proper division. If only one shall exist, a very large part of the water resources of that section are wasted, so that it is the business of the Government, in order to utilize to the utmost the water resources of that region, to take hold and regulate how that water ought to be used for the best advantage of the people and encourage all interests properly in the best use of the water which is for the public use.

Now, in the St. Croix River we had the same trouble years ago; both navigation and the power interests wanted to be first considered. After various hearings the War Department adopted a set of rules and regulations which have worked fairly well ever since, navigation being given the preference in the use of the water. The same condition will necessarily exist at Keokuk. Of course, the steamboat owners wish to use that water and go as they please all the time. Naturally, I do not blame them at all. The power interest wishes to use that water all the time. Neither of them can do so. If the gentleman's amendment passes, that will eliminate the Keokuk Dam as a power proposition. If the Keokuk Dam people would have their way, it almost would wipe out the steamboats unless we shall be careful. Neither of them ought to have their own way. Both of them should exist and flourish. It is the business of the Government to decide what ought to be done and cause them all to be good and all to prosper, and our committee had that very situation in mind in framing the present law, where it provides:

And in the use and operation of such navigation facilities the interests of navigation shall be paramount to the uses of such dams by such grantee for power purposes.

In other words, we provide that in the disposition of the water the War Department shall give first consideration to the interests of navigation. Now, we had this same complaint last winter when the committee went to Keokuk, and we found the same condition had existed, and we found undoubtedly that the power company was to blame in doing or allowing that to be done. We jumped on them just as hard as we knew how, and we told them that that condition ought to stop and must stop and that navigation ought to be cared for, and the engineer was informed and the power company was informed and the steamboat people were informed of the rules by which they can have the right to have power at such times as may be deemed reasonable by the Chief of Engineers. We were informed that the situation last fall, of which the gentleman from Illinois complains, was due in large part to the experiments in the use of water with a new dam, to the closing or adjusting parts of the works, which was necessary then, and would not occur again. We examined the situation and believed it to be true and that such difficulties will not occur again to the detriment of navigation.

But if the law places a hard-and-fast rule on the use of water, of course that disposes of the use of the water for power, and but little power could be generated; so the value of the plant for that purpose would be destroyed. The result is, we believe, that this amendment placed by the committee in the bill would notify the engineers that that water must be conserved, that it must be utilized to the greatest advantage for both navigation and power, and that navigation should be paramount. But if we attempt to make a hard-and-fast rule that the natural flow for navigation must be maintained all the time, that completely destroys all power.

Now I yield to the gentleman from Illinois.

Mr. RAINEY. I do not think the gentleman understood the amendment as read.

Mr. STEVENS of Minnesota. I listened to it carefully.

Mr. RAINEY. It seeks to accomplish exactly what the gentleman wishes.

Mr. STEVENS of Minnesota. But I will say to the gentleman that the Keokuk Dam is not the only dam in the United States. Remember that this bill covers all the dams. The War Department and the Chief of Engineers, with their officers and civil engineers of ability and experience on the ground, who have had experience in that kind of work—and they have it all over the United States under all sorts of conditions—can adopt rules and regulations to preserve this water to the best advantage of the people better than can be done by an arbitrary rule laid down by the House.

Mr. ESCH. Mr. Chairman, will the gentleman yield?

Mr. STEVENS of Minnesota. Certainly.

Mr. ESCH. Does not the law now authorize the Secretary of War to determine and regulate the level of the boom?

Mr. STEVENS of Minnesota. Yes: that was provided in the first water-power bill that was passed, and we continue it in this bill. But now we lay down the rule as to preference. I believe the preference ought to be given to commerce; and, fitting in with this situation all over the United States, I think it would accomplish just exactly what my friend from Illinois [Mr. RAINEY] desires to accomplish, and yet give some benefit to the power resources.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Illinois [Mr. RAINEY].

The question was taken, and the amendment was rejected.

Mr. THOMSON of Illinois. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Illinois offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amend, page 7, by striking out the word "such" after the word "any," in line 5 of said page, and by inserting, after the word "dam," in said line, the following: "built under the provisions of this act."

The CHAIRMAN. All debate on this paragraph and amendments thereto has closed.

Mr. THOMSON of Illinois. I beg pardon. I have five minutes.

Mr. ADAMSON. There is five minutes' time left.

The CHAIRMAN. Yes. The gentleman from Illinois will proceed.

Mr. THOMSON of Illinois. Mr. Chairman, in connection with the amendment offered by the gentleman from Minnesota [Mr. ANDERSON], on line 3 it seems to me this amendment should be made. Unless this amendment be made in connection with the amendment offered by the gentleman from Minnesota and adopted, the section would read this way:

That the right is hereby reserved to the United States to construct, maintain, and operate in connection with any dam built in accordance with the provisions of this act a suitable lock or locks, booms, sluices, or any other structures for navigation purposes and the operation of navigation facilities which shall be constructed as a part of or in connection with such dam.

In other words, the word "such" would seem to limit what follows to such dams as the Government might put a lock in.

Mr. ADAMSON. Mr. Chairman, will the gentleman yield there for an interruption?

Mr. THOMSON of Illinois. Certainly.

Mr. ADAMSON. Does the gentleman think that the insertion of the amendment of the gentleman from Minnesota changes the preceding sense or the object to which the word "such" refers?

Mr. THOMSON of Illinois. With the amendment of the gentleman from Minnesota, the word "such" confines what follows to the dam that the Government might put a lock in.

Mr. ADAMSON. Let me hear the gentleman read it as he has amended it.

Mr. THOMSON of Illinois. I read:

That the right is hereby reserved to the United States to construct, maintain, and operate in connection with any dam built in accordance with the provisions of this act a suitable lock or locks, sluices, booms, or other structures for navigation purposes and the operation of navigation facilities which shall be constructed as a part of or in connection with such dam.

And so on.

Mr. ADAMSON. What do you put in there?

Mr. THOMSON of Illinois. I strike out the word "such" and put in the words "built under the provisions of this act" after the word "dam."

Mr. ADAMSON. If you do not strike out the word "such," it still will not refer to anything except "under the provisions of this act." Does not the word "such" mean the same thing?

Mr. THOMSON of Illinois. No, sir; it does not. The word "such," with the amendment inserted in line 3 by the gentleman from Minnesota, would seem to relate to the language in lines 3, 4, and 5—to such dams as the Government would build a lock in.

Mr. ADAMSON. You have added in there "in connection with the construction," and so forth.

Mr. MANN. The amendment offered by the gentleman from Minnesota says "any dam built in accordance with the provisions of this act." That is the dam referred to. That is "such" dam.

Mr. THOMSON of Illinois. I do not think so. If I did, I would not offer my amendment, certainly.

Mr. MANN. "Such dam" must refer to that, because that is what it is.

Mr. THOMSON of Illinois. No. The first words of the section, with the amendment adopted offered by the gentleman from Minnesota, provide that the Government reserves the right to build a lock in a dam, and then it goes ahead and says that "the operation of navigation facilities which shall be constructed in any such dam," namely, the dam that the Government decides to build a lock in, and so on.

Mr. MANN. How does the gentleman propose to change it?

Mr. THOMSON of Illinois. I propose to change it so as to read "any dam built under the provisions of this act."

Mr. MANN. I do not think there is any objection to that.

Mr. ADAMSON. I do not think it makes any difference.

Mr. THOMSON of Illinois. It removes the possibility of raising a question; and at least there is a possibility of contending that the word "such" in there means——

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Illinois [Mr. THOMSON].

The amendment was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

SEC. 6. That the persons constructing, maintaining, or operating any dam or appurtenant or accessory works, in accordance with the provisions of this act, shall be liable for any damage that may be inflicted thereby upon private property, either by overflow or otherwise.

Mr. LIEB. Mr. Chairman, I move to strike out the last word.

The CHAIRMAN. The gentleman from Indiana moves to strike out the last word.

Mr. LIEB. Mr. Chairman, the committee, in its report, urges the passage of this bill for two reasons, namely:

First and primarily, to promote navigation on streams which otherwise would never be navigable. * * * And, secondly, to permit the development of the resources and the progress of the industries of the countries through which those streams run by encouraging the development of possible water power on those streams.

I am opposed to the measure for two reasons: First, because it is absolutely hostile to time-honored Democratic principles, and, secondly, because it does not square with sound, practical business methods.

My disagreement with the first reason advanced by the committee is clear-cut. I do not believe that this bill will "first and primarily, promote navigation." I am firmly convinced that that very desirable result will be subordinated, and that the first and primary effort will be to promote water power for private gain. The committee's second premise is in reality not a premise at all but merely a tail to the first kite, so that the proposition is that of whether or not this bill, if enacted into law, will or will not have the beneficent effect predicted by the committee.

Has this House, composed of men of wide experience, forgotten that immortal doctrine of the father of Democracy with which every school child is familiar: "Equal rights to all; special privileges to none"? This sentiment has been reiterated by the Democratic Party at every opportunity since its utterance. Witness this paragraph from the platform adopted by the Democratic Party at Baltimore in 1912:

We insist upon the full exercise of all the powers of the Government, both State and National, to protect the people from injustice at the hands of those who seek to make the Government a private asset in business. There is no twilight zone between the National and State in which exploiting interests can take refuge from both.

I can not conceive how it would be possible to engineer a more brazen attempt to create a "twilight zone" than in the case of this bill. Why give this special privilege to water-power monopolists at the expense of equal rights to all our citizens, so that our streams will be made navigable? Oh, shades of Jefferson, behold the water-power monopolists in the light of public benefactors

Under the present policy of river and harbor improvement rivers are not improved unless the territory through which they pass is evidently able to originate sufficient traffic to compensate for the cost of the improvement. That being the case, this bill seeks to secure the navigability of a stream which is manifestly unproductive of commerce by giving to the water-power monopolists one of the greatest natural resources of which the country boasts. The benefits that might be derived from making a given stream navigable can be pretty fairly gauged. The loss through giving away the people's heritage can not even be estimated. Yet it is here proposed to make the exchange. It is a similar proposition to that of the small boy whose pocketknife has a broken blade proposing to swap "sight unseen" with the boy whose knife he knows to be in perfect condition. It is the sale of a birthright for a mess of pottage. [Applause.]

I now propose that if we are to give away our birthright we find a more worthy object for our bounty than the Water Power Trust. If we must make a gift, let it be to the people. Let us improve every navigable stream at the expense of the people of the several States and then let us declare the several States and their people the owners of the water power that has been thus developed The income derived by the States would ultimately compensate for the cost of the improvement, and the people would still hold title to the water-power right and have the

benefit of a vast system of navigable streams by means of which to carry on their commerce. If the water-power monopolists can pay for the cost of making these streams navigable from revenue derived from the water power, the people can do the same thing, and in addition keep these great natural resources for themselves and posterity.

Mr. ADAMSON. Mr. Chairman, will the gentleman permit a question?

Mr. LIEB. Excuse me for the present.

The CHAIRMAN. The gentleman declines to yield at this time.

Mr. LIEB. I call to Members' attention as a concrete example the case of this good city of Washington. A few miles above the city there is what is known as the Great Falls of the Potomac River. Every Member of the House knows the possibility of that section as to the development of water power, and, further, that the Potomac is only navigable up to that section. Under the terms of this bill water-power monopolists can secure the right to build locks and a dam at or near Great Falls of such a character as to form a pool that will make that section of the Potomac navigable. They then have a monopoly of the water power that might be developed there. This water power could then be sold in the city of Washington at a considerable profit. As a result a section of the country which is not largely productive of commerce would have for the development of its commerce a navigable stream, but the people would have lost the water-power right and extended special privileges to the water-power monopoly.

My proposal is that the Federal Government build that lock and dam and then give to the government of the District of Columbia the water power thus created. Let the District government derive whatever profit is to be made from the project. But the argument is advanced that the people would be compelled to bear the burden of the cost of construction. That can not be gainsaid. But what of lightening those burdens by means of the sale of the water power, and so forth? I repeat that on this basis, if the project should be carried to a conclusion, we would find here a navigable river, cheaper and better light and power facilities, and ultimately, through the retention of the water-power rights in the hands of the people, a lower rate of taxation. [Applause.]

In my judgment there are innumerable legal and technical weaknesses in this measure that are of themselves sufficient to condemn it, but I base my opposition on broad, economic ground. I say render unto the people that which is the people's, remain true to the Democratic faith, and husband for posterity the priceless heritage that is theirs. Let us not follow in the footsteps of our predecessors by creating a "twilight zone," where special privilege can mulct the people unrestrained.

I can not believe that a bill so undemocratic as this will ever become law during a Democratic administration. Should it pass this House I predict for it a peaceful end in the Senate, but should it by mischance reach the Executive, I feel confident that the great statesman and friend of the people now occupying the White House will find expression for a righteous wrath by exercising his constitutional prerogative of the veto. [Applause.]

In this connection I desire to quote an article on Waterway Improvement written by Gen. William H. Bixby, former Chief of Engineers of the United States Army, for the Engineering News:

For future development in river transportation it is far more essential to increase the total mileage for the use of medium draft vessels in the United States than it is to secure deeper draft improvements along the comparatively short stretches of the ocean and Great Lakes water fronts. Ideal transportation will not be accomplished until all rivers and canals may be utilized by vessels drawing from 6 to 9 feet.

The most important function of a river is its use as a free, or nearly free, route of transportation, but at the same time the river is exceedingly useful as a means of water supply for household, municipal, factory, and farm consumption, as a means of dynamic power, and as a means of drainage and sewerage. On the other hand, the river is detrimental and often dangerous as regards its power to destroy riparian properties by erosion, and a source of mixed benefit and danger from its overflow.

As a general rule, the availability of the river for irrigation and power is greatest in the upper quarter of its length, where navigation is impracticable. The river is usually most dangerous to property in the upper quarter and lower half; and its usefulness for drainage, sewerage, or refuse removal is greatest in its lower three-quarters. For direct consumption of its water by people and factories, quantity and uniformity of flow and purity of water are important features; for irrigation purposes the purity usually becomes nonessential; for power alone the quantity of water, its uniform flow, and height of fall are important.

Droughts injure the usefulness of the river for alimentation, irrigation, drainage, and navigation purposes and have but few, if any, redeeming qualities. Floods, though often causing great damage by bank erosion and by property destruction, are yet often of great benefit by reason of their fertilizing deposits, which so enrich the river bottom lands that even one good crop in three years will sometimes render the land profitable to the landowner.

The special conditions most favorable to each of the above functions of a river are so divergent that it is usually impossible to establish any river improvement without detriment to one or more of such functions. A reasonable compromise in such matters is all that can be expected.

Under such circumstances Federal conservation and control of water interests, as a whole, seems difficult and impracticable, except within public lands; and State control within State limits, subject only to Federal control of the interests of public navigation, now seems the only immediate, and possibly final, solution of the question.

While storage reservoirs for irrigation purposes, for city and factory use, for navigable canals, or for power on the upper nonnavigable portions of rivers, are used to a moderate extent throughout Europe, artificial reservoirs at river headwaters merely to prevent low-water stages in the lower navigable river are not in general or extensive use.

The weakest point of any storage-reservoir system for flood prevention is that the most dangerous and injurious floods in a river basin are often produced by heavy rainfall in the middle areas of such basin, while the reservoirs near the headwaters of the river are too high up the river to be of use when most needed.

In many European countries, such as Austria-Hungary, the protection of property from river overflow is secured generally by levees on each side of the river bank of such height and distance apart that the space between them is sufficient to hold as much water as can fall during several days of heavy rainfall in the basin above, the result of such levees being practically to form a long, narrow, temporary, and intermittent reservoir, requiring several days to fill or to empty, along the full length of the river in the place where most needed. The cost of such reservoirs between levees being no more than the cost of upstream reservoirs necessary to produce an equally useful effect.

Such water control by levees for reducing to a minimum the property damage from floods appears to have proved the most satisfactory solution up to the present time.

In France, Germany, and Austria the General Government and improvement associations acquire the riparian properties before commencing or completing the river improvements, by which process the reclaimed lands become sources of profit to the improvement work and help to pay therefor. This practice, so far as legal and practicable, seems worthy of being followed in the United States, and legislation in that direction should be enacted or encouraged for all locations.

The ownership of water powers on existing streams, while a question of great importance, is still not at all uniform throughout the various individual States and, perhaps, not fully settled in the courts.

Except where the Federal Government is the original owner, as within the forest reserves under charge of the Department of Agriculture, or on other public lands under charge of the Department of the Interior, or by special acquisition and act of Congress, the Federal Government has not at present any absolute undisputed ownership of undeveloped water powers.

But on all navigable streams and on those which affect navigation the Federal Government has a limited control of water and water powers. As a general rule, throughout the United States, the public right to the use of a river for purposes of navigation to the extent deemed proper by the Federal Government, takes precedence over all other rights; and the use and control of the water and of its flow within the river takes precedence over other uses and controls.

The general dam act of June 23, 1910, recognized the fact that the ownership of power developed by dams constructed wholly at private expense is a matter for control by the individual States and not by the Federal Government. In accordance with this act, the United States, through the War Department, is empowered to require the dam owner to furnish free of cost such water and such locks, log sluices, fishways, and other auxiliary constructions as are necessary in the interest of navigation and the fisheries, and the act reserves to the United States the control of water levels.

What is most essential is not so much the present development of the water power as it is such an early action by each State as shall assure the conservation of all potential water powers in such a way as to prevent them from being monopolized by private parties during present disuse, and as to make possible at any future day their use to the fullest extent allowable and to the greatest benefit to the general public.

As levees and drainage are built principally for the reclamation of farm land and of other private properties; as irrigation systems are built principally for the development of farm property and the building up of communities; and as water powers are developed principally for the building up of corporations and business concerns concerned mainly with developments within a single State, it seems very proper that all these engineer constructions should be regulated, if at all, by State authority rather than by Federal authority, and that the Federal Government should intervene only as an advisor or a controller, and should be an executive only so far as such constructions reach within the limits of several States or directly affect the development and prosperity of several States.

Because of the present growing probability that the natural resources of land and water must eventually be handled in some such manner as above outlined, it is already urgently necessary that every State of the Union, which has not already done so, should establish at an early date an office of State engineer, or its equivalent, to investigate, report results, advise the State legislature, direct construction operations, and exercise State control of all work or drainage, irrigation, water-power construction, and other water utilities within each State, leaving to the Federal Government the control of only such of these constructions as concern such rivers and harbors as do not properly come under control of a single State.

Mr. LINDBERGH. Mr. Chairman, I desire to offer an amendment.

The CHAIRMAN. The gentleman from Minnesota offers an amendment which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. LINDBERGH:

Page 7, line 24, after the word "works" insert "and lessees under section 14 of this act."

Mr. ADAMSON. Will the gentleman yield?

Mr. LINDBERGH. Yes.

Mr. ADAMSON. Did you examine the language at the top of page 10, where you will see that that provision is already amply made—

and also subject to all the provisions and conditions of this act to the same extent as though such successor or assign were the original owner hereunder?

Mr. LINDBERGH. The gentleman may be correct about that, but there are six of these Government reservoirs in my district——

Mr. ADAMSON. The purpose of this language is to meet that.

Mr. LINDBERGH. And I should like to have the same rule of damages apply to those who take leases, as applied to the owners of the original structures, and if there is any doubt about it, I should like to have that doubt removed.

Mr. ADAMSON. If the gentleman will notice the language preceding that—

And any successor or assign of such property or project, whether by voluntary transfer, judicial sale, or foreclosure sale or otherwise, shall be subject to all the conditions of the approval under which such rights are held.

Mr. LINDBERGH. Where is that?

Mr. ADAMSON. At the top of page 10. It was put in there for the very purpose for which the gentleman suggests his amendment.

Mr. LINDBERGH. That applies to permits to construct dams. I refer to section 14, where there is a provision for the leasing of the power from the reservoirs, and I have not yet concluded that the right to secure damages applies against the people who secure lease rights under section 14.

Mr. ADAMSON. When the gentleman gets to section 14 he will find that it also is amply guarded to meet these conditions. If not, we can amend it when we get to it.

Mr. LINDBERGH. With that understanding, I withdraw the amendment.

Mr. MANN. I object. I want to be heard on the amendment.

The CHAIRMAN. The gentleman from Illinois objects to withdrawing the amendment.

Mr. MANN. We might as well discuss it now as when we get to section 14.

The gentleman from Minnesota [Mr. LINDBERGH], who has just succeeded, with his influence, in passing through this House a bill authorizing homestead entries upon some of the lands where the Government has flowage rights and reserving the flowage rights to the Government, has now proposed an amendment which would require the Government to pay for overflowing any of these lands where it has reserved the flowage rights. That is in effect the proposition now pending. The gentleman proposes to make any lessee of the Government pay for any damage that may be inflicted by overflow or otherwise. These lessees are lessees of Government projects. In effect it is the Government itself, because if the lessee has to pay a certain amount of damages, of course the lessee will not pay as much.

Mr. LINDBERGH. I do not ask to have my amendment apply particularly or alone to those who take homesteads on these lands; but there are many other people whom this section will affect, who have lands that may be damaged by the overflow. A comparatively small part of the land will be owned by the people who take homesteads.

Mr. MANN. I believe my friend from Minnesota [Mr. LINDBERGH] is going up to make an investigation of some of these overflow matters. I do not doubt that there may be cases where the Government is equitably bound to make reparation for overflow, if the Government did not have the right to overflow a reservation, in reference to these reservoirs in the gentleman's district. But if the Government is under that obligation, the Government must assume it. It can not pass it on to the lessee down on the Mississippi River, away below the reservoirs. The Government must remain under the obligation, and if there be any obligation it ought to settle; but where the Government has reserved the right to overflow there ought not to be any obligation on the part of the Government. Now, there is no object in putting this burden on the lessee, because with that burden imposed the Government gets that much less money for the lease of the power it has reserved or created.

Mr. LINDBERGH. Does not the gentleman think this section establishes a rule of damages different from the common law?

Mr. MANN. I do not. I will say to the gentleman frankly that I put this provision, or one like it, into the first law, as a matter of extra precaution. I doubt whether the Government has any jurisdiction over the subject at all.

Mr. STEPHENS of Minnesota. Is there any doubt that it has not?

Mr. MANN. It is perfectly plain that if we give to a grantee the authority to build a dam, and he injures private property in a State, under the State constitution he must pay for the damage to the private property.

In most of the States if he takes or injures the property he is liable for it. The Government has no control over these laws, because they are State laws affecting only the personal property in the State. But in order that we might put the grantees on notice that they were obliged to pay for these damages inflicted, we put it into the various laws originally that have been passed so that they would know that we recognize the fact that they were liable to damages, although I do not think you could bring a suit under that provision.

Mr. ANDERSON. If I understand what my colleague is after it is to make the Government liable where it builds reservoirs in connection with the dam and its overflows.

Mr. MANN. Undoubtedly the amendment offered by the gentleman's colleague would be effective, because while we have no power over damages to private property in a State, we have control of the question of recovering damages against the United States or its lessees.

Mr. LINDBERGH. I am not seeking to make it apply to the Government, but to make it apply to those who acquire the leases.

Mr. MANN. That is the same effect; they are the lessees of the Government property.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota.

The question was taken, and the amendment was rejected.

The Clerk read as follows:

SEC. 7. That any grantee who shall fail or refuse to comply with the lawful order of the Secretary of War, made in accordance with the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $1,000, and every month such grantee shall remain in default shall be deemed a new offense and subject such grantee to additional penalties therefor; and in addition to said penalties the Attorney General may, on request of the Secretary of War, institute proper proceedings in the district court of the United States in the district in which such structure or any of its accessory works may, in whole or in part, exist, for the purpose of having such violation stopped by injunction, mandamus, or other process; and any such district court shall have jurisdiction over all such proceedings and shall have the power to make and enforce all writs, orders, and decrees necessary to compel the compliance with the requirements of this act and the lawful orders of the Secretary of War and the performance of any condition or stipulation imposed under the provisions of this act; and if the unlawful maintenance and operation are shown to be such as shall require a revocation of all rights and privileges held under authority of this act, the court may decree such revocation. In case of such a decree, the court may wind up the business of such grantee conducted under the rights in question, and may decree the sale of the dam and all appurtenant property constructed or acquired under authority of this act, and may declare such dam and accessory works to be an unreasonable obstruction to navigation and cause their removal at the expense of the grantee owning or controlling the same, except when the United States has been previously reimbursed for such removal, or may provide for the sale of the dam and all accessory and appurtenant works constructed under authority of this act for the further development of water power, and may make and enforce such other and further orders and decrees as equity demands; and in case of such a sale for the further development of water power the vendee shall take the rights and privileges and shall perform the duties which belonged to the previous grantee, and shall assume such outstanding obligations and liabilities arising out of the maintenance and operation of said dam and accessory works for power purposes as the court may deem equitable in the premises.

Mr. ANDERSON. Mr. Chairman, I move to strike out the word "and," in line 4, page 9, and insert the word "or."

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 9, line 4, strike out the word "and" and insert in lieu thereof the word "or."

Mr. ANDERSON. Mr. Chairman, I think the necessity of that amendment must be obvious to the committee. I do not want to take much time.

Mr. ADAMSON. I do not think it is worth debating. The two propositions are coupled with the word "and," meaning that they can do either one or both.

Mr. THOMSON of Illinois. Mr. Chairman, I have an amendment in the way of a substitute.

The CHAIRMAN. The Clerk will report the amendment by way of a substitute.

The Clerk read as follows:

Amend, page 9, lines 2, 3, and 4, by striking out everything after the word "and," in line 2, down to and including the word "and," in line 4.

Mr. THOMSON of Illinois. Mr. Chairman, the part that is stricken out includes the word "and" that would be changed under the amendment of the gentleman from Minnesota to the word "or." The language stricken out is as follows:

may decree the sale of the dam and all appurtenant property constructed or acquired under authority of this act, and——

Mr. ADAMSON. Why does the gentleman object to that if the Government can find a better party to conduct it?

Mr. THOMSON of Illinois. Because the same proposition is contained in lines 9, 10, and 11 on page 9, where it says—

or may provide for the sale of the dam and all accessory works constructed under authority of this act.

Mr. ADAMSON. I have been pretty good in regard to the gentleman's doubling up language two or three times. We are not stingy about the use of language.

Mr. THOMSON of Illinois. I would not charge the gentleman with being stingy, but I am certain that he does not want to use the same language two or three times with no purpose. I wish the gentleman would permit me to read the section beginning at the bottom of page 8 with this language left out:

In case of such a decree, the court may wind up the business of such grantee conducted under the rights in question, and may declare such dam and accessory works to be an unreasonable obstruction to navigation and cause their removal at the expense of the grantee owning or controlling the same.

That merely says that in such case he may wind up the business concern and by decree provide for a removal of the dam, or he may sell it. The language I propose to strike out is left in the bill almost word for word. I call the gentleman's attention to the fact that in one place it is in the bill in italics and in another place in roman. The italics were added after the other part, and maybe they put in the same language twice by mistake.

Mr. ADAMSON. If the gentleman will permit, I will ask the gentleman from Minnesota to apologize.

Mr. STEVENS of Minnesota. I think the gentleman from Illinois is correct.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois as a substitute.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. ANDERSON. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 8, lines 10 and 11, after the word "penalty," strike out the words "the Attorney General may on request of" and insert the word "may" after "Secretary of War."

Mr. ANDERSON. Mr. Chairman, the pending section changes in a very vital particular the present law with respect to the enforcement of the orders of the Secretary of War in connection with the water power in navigation projects. The present law provides that in case of a violation of the lawful order of the Secretary of War he may cause the removal of the property erected under the act. The pending section provides that he may apply to the Attorney General to institute an action to cause the enforcement of the order.

It is perfectly obvious that it is of absolutely no avail for the Secretary of War to make an order requiring the grantee to perform any particular act if he has not the power to compel the enforcement of that order. Under the pending section he can do absolutely nothing except apply to the Attorney General to institute the necessary proceedings in mandamus or injunction, whatever it may be, to compel the enforcement of his order, because the section reads:

And in addition to the penalties, the Attorney General may, on request of the Secretary of War, institute proper proceedings in the district court of the United States—

And so forth.

Mr. ADAMSON. What is the gentleman's suggestion?

Mr. ANDERSON. I simply propose to strike out the language, "the Attorney General may, on request of" and insert after the words "the Secretary of War" the word "may," so that it will read:

In addition to the penalties, the Secretary of War may institute proper proceedings—

And so forth.

Mr. ADAMSON. He would have to do it through the Attorney General, would he not?

Mr. ANDERSON. I do not think he would necessarily, but even if he did, it is at least mandatory in that event, which it certainly is not now.

Mr. ADAMSON. I am perfectly willing to substitute the word "shall" for the word "may," but it means the same thing.

Mr. MANN. Oh, not at all.

Mr. ADAMSON. But I do not think we ought to use mandatory language to a Cabinet officer.

Mr. ANDERSON. Of course, as far as I am concerned, I object to the whole proposition, which changes the enforcement of the law from an administrative enforcement to a judicial enforcement.

Mr. ADAMSON. Does the gentleman imagine that he could get up a legitimate section that would dispense with the possibility of litigation?

Mr. ANDERSON. Not at all.

Mr. ADAMSON. You can not deny a citizen of the United States access to the courthouse. You have to file suit against him and let him plead.

Mr. ANDERSON. The present law—and I understand the gentleman had something to do with the passage of that law—provides that the Secretary of War may, upon the refusal of the persons owning or controlling any such dam, and so forth, to comply with any lawful order, cause the removal of such dam, accessory works, and so forth.

Mr. ADAMSON. He would have to do it just exactly as we have expressed here—by a lawsuit.

Mr. ANDERSON. I do not think he would at all. It is an administrative proposition. This section changes absolutely the general policy with respect to the enforcement of these orders of the Secretary of War. There can not be any question about that.

Mr. STEVENS of Minnesota. All it changes is the burden. It does not change going into court at all.

Mr. MANN. Mr. Chairman, I am not sure that I recall exactly all of the provisions in the original dam law, but my recollection is that it authorized the Secretary of War to remove a dam where the Secretary thought it was an obstruction to navigation, if he choose, and it put a penalty upon the obstructor or the owner of the dam who did not remove it when he was notified to, and that was the second remedy. The third remedy was to authorize the Secretary of War, through the Attorney General, to go into court through mandamus, injunction, or any other summary or other kind of proceedings, so that there could be no rights lost on the part of the Government to remove obstructions where they ought to be removed. Of course, if the Secretary of War should come in and remove an obstruction to navigation illegally, he would be responsible for that act, and probably the officials under him would be personally responsible. The Secretary of War would not do that where there was any possible controversy. There might be cases, however, where the Secretary of War would direct the officials to remove an obstruction to navigation, as he does now, in the case of a sunken vessel or things of that kind in a river, where he does not wish to go into court to get authority to do it.

Mr. ADAMSON. What does the gentleman think of the suggestion of the gentleman from Minnesota [Mr. STEVENS] that this merely changes the burden, that under the provision to which the gentleman refers the grantee himself could go in and restrain an illegality if it was illegal to do so.

Mr. MANN. The grantee will not come in.

Mr. ADAMSON. The point is that you can not deprive a man of his rights in court.

Mr. MANN. You can not deprive a man of his rights theoretically, but you can sometimes remove his obstruction to navigation, whether he consents or not. The gentleman from Minnesota [Mr. ANDERSON] has suggested in the amendment that he proposed, as I understand it, to make the statute read that the Attorney General shall commence the suit.

Mr. ANDERSON. Oh, that was suggested by the gentleman from Georgia.

Mr. MANN. I understood the gentleman from Minnesota to suggest that.

Mr. ADAMSON. No; the gentleman from Minnesota wants to leave it so that the Secretary of War may or shall commence suit without going to the Attorney General.

Mr. MANN. The Secretary of War, of course, can not commence a suit. Suit has to be commenced by an attorney. The Secretary of War is not officially an attorney. He might commence a suit, I suppose, if we authorized him to do so by the Judge Advocate General, but the suits on behalf of the Government of the United States are brought through the district attorneys of the United States, and they are under the jurisdiction of the Attorney General. It would be ridiculous, it seems to me, to say that all over the United States the Secretary of War should be obliged to send the Judge Advocate General to commence a suit in any district in the United States, instead of having the regular attorneys attend to those suits. Nor do you want to say that the Secretary of War "shall," because it will be a constant practice where anything is done at all for the Secretary of War to refer certain facts to the Attorney General with the request that if the facts warrant it the Attorney General shall commence a suit on behalf of the United States, and it will be the Attorney General, or the lawyers, who must determine in the end whether the facts warrant the beginning of a suit.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota.

The question was taken, and the amendment was rejected.

The Clerk read as follows:

SEC. 8. That no property or project installed and operated under the provisions or benefits of this act shall be assigned or transferred except upon the written consent of the Secretary of War, except by trust deed or mortgage issued for the purpose of financing the business of such

owner, and any successor or assign of such property or project, whether by voluntary transfer, judicial sale, or foreclosure sale or otherwise, shall be subject to all the conditions of the approval under which such rights are held, and also subject to all the provisions and conditions of this act to the same extent as though such successor or assign were the original owner hereunder.

Mr. STEVENS of New Hampshire. Mr. Chairman, I desire to offer the following amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amend, page 9, line 21, after the word "that," by inserting the words "no rights granted under the provisions of this act and."

Mr. STEVENS of New Hampshire. Mr. Chairman, this section is intended to prevent the transfer of property or any project without the consent of the Secretary of War, and it should be so amended as to include not only the property, but any rights granted under the act. The grantees have at least one year in which to begin the actual project. It would be possible under this section as now written for promoters to get the franchise under the act and dispose of it, quite a usual proceeding in the development of water power, and I think that this ought to be prevented.

Mr. ADAMSON. That is all right.

Mr. STEVENS of Minnesota. If the gentleman will permit me to ask, does not the word "project" include rights? Was not that the intention?

Mr. STEVENS of New Hampshire. I think that was the intention, but the words "install and operate" clearly restrict it to the actual property.

The question was taken, and the amendment was agreed to.

Mr. THOMSON of Illinois. Mr. Chairman, I desire to offer an amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amend, page 10, line 2, by inserting, after the word "project," the following: "or any rights accruing hereunder."

Mr. THOMSON of Illinois. Mr. Chairman, that amendment is merely following out the amendment offered by the gentleman from New Hampshire, and if one is adopted the other should be.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

SEC. 9. That the rights herein granted shall continue for a period of 50 years from and after the date of the completion of the dam described in the original approval, and after the expiration of said 50 years such rights shall continue until compensation has been made to said grantee for the fair value of its property, as hereinafter provided, or until said rights and privileges are revoked as provided in this act, or until action by Congress shall have provided for the disposition of the project or for extending the consent of Congress and fixing the period of extension, as well as providing such additional terms and conditions of consent as Congress may deem wise.

Mr. STEVENS of New Hampshire. Mr. Chairman, I desire to offer the following amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amend section 9, page 10, by striking out all of said section and substituting in place thereof the following:

"SEC. 9. That the rights granted herein shall continue for a period of 50 years from and after the date of the original approval unless sooner revoked or forfeited, as provided for in this act."

Mr. STEVENS of New Hampshire. Mr. Chairman, this amendment makes two rather important changes in this section. The original section provided that the 50 years should begin to run from the date of the completion of the dam. That is changed by the amendment to the date of the original approval. The date of the completion of any particular dam or project is necessarily more or less vague. There might be disputes arising as just when the dam is or is not completed; and it is very essential in fixing the term of any charter that the date and time from which the charter began to run should be very definite and possible to ascertain, and therefore it is changed by this amendment to the date of the original approval. Under section 9 as originally written the charter, though for 50 years, is really in fact an indefinite charter. It runs for 50 years, or until the Government shall take the property away, or until Congress shall pass some other act, some other law. I believe a charter granted under this act, which is for 50 years, and a long term, should be not only definite when it begins, but absolutely definite when it closes, and the time should be fixed certainly for the end of the charter. If the Government should not see fit to take the property over, and if Congress should not have provided for a disposition of the project for extending the consent of Congress or fixing the period of extension, the grantees would then be merely tenants by sufferance, which is really all the rights they ought to have under such a long-term lease. One other benefit, I think, would be derived from accepting this amendment. I have no doubt that the rights of the grantees under this charter will be in many instances a valuable right, and the conditions and terms which we would fix to-day are likely to be much more generous to capital than those that would be fixed 50 years from now. Consequently the grantees under this act without exception, in my opinion, will desire no further legislation on the part of Congress.

They will prefer to have this charter run as long as possible. Therefore they will be in a position to obstruct or desire no legislation by Congress. But if their term absolutely expires, they are merely tenants by sufferance, and in order to get a definite extension of the rights of a new charter it will require affirmative action by Congress, these interests themselves will be anxious for action by Congress.

Mr. UNDERWOOD. Will the gentleman allow me to ask him a question there?

Mr. STEVENS of New Hampshire. Yes.

Mr. UNDERWOOD. My desire in reference to this bill is entirely on the question of making it sufficiently liberal to get capital to invest its money. Now, as I understand the gentleman's proposed amendment, he proposes to have the grantee's rights entirely cease at the end of 50 years. Now, the proposition herein contained is that the grantee can have his rights taken away from him at the end of 50 years on the happening of an event, to wit, the paying him back of the fair value of his property. Now, if your provision goes in there and he is required to get further legislation and there is no provision in there that the Government at the end of the happening of this event should absolutely pay him back his money, do you think anybody would put their money in there?

Mr. STEVENS of New Hampshire. Yes; I think they would.

Mr. UNDERWOOD. In view of the fact that he can not amortize this proposition because of the regulation of the rate?

Now, it seems to me, if the gentleman will allow me——

Mr. STEVENS of New Hampshire. Is this on my time or the gentleman's time?

Mr. UNDERWOOD. I did not propose to talk in the gentleman's time. I just wanted to call that to his attention as a business proposition.

Mr. STEVENS of New Hampshire. I am willing for the gentleman to proceed, but I did not want it to come out of my time. If it is my time, I wish to make a suggestion in answer to the argument. The fact that the charter terminates, and the rights terminate under the charter, does not of itself, of course, deprive the corporation of its rights in the property that it has constructed and built. If the termination of the charter also forfeited the rights of the property, I think it is true that no capital would be put in. As a matter of fact, if this amendment were adopted, I think there would be no doubt that Congress would either take the property over or would actually provide new terms for its extension. And I believe my amendment would force the adoption of new terms and conditions, and the gentlemen who have their money in it would be asking for legislation rather than making objections to legislation.

Mr. UNDERWOOD. I do not accord at all with the view sometimes expressed here that Congresses of the future will not act in the interests of the people. I think this Congress to-day mainly acts in the interests of the people, and I think we can safely say that Congress in the future is going to do so.

But, if the gentleman's amendment should be adopted and the rights of the grantee are cut off absolutely at the end of 50 years, without he comes to Congress to get a further extension, I take it, then, if his amendment means anything, that the grantee could no longer operate the dam. He might own the machinery, he might own the plants, but he could not continue his operation; and that would be worse than confiscation, because he would be compelled to continue maintenance charges to protect his property, at the same time not being allowed to use his property. Now, if it does not mean that, if the gentleman's amendment does not mean that he is going to cease operations, it does not mean anything more than this bill does, that at the end of 50 years he can use his property until the Government takes it away from him.

Mr. STEVENS of New Hampshire. The tenancy could be stopped not only by Congress but by the action of the Secretary of War.

Mr. UNDERWOOD. That can not be done now, provided he has paid for his property. I take it the only thing in the world, as this bill stands to-day, at the end of 50 years, that prevents the Government or somebody designated by the Government from taking the property is the payment of the money. I think the gentleman will concede that under the terms of this bill the property ought not to be taken from the grantee until he has paid back the money according to the terms of the bill. And it seems to me that that would put an unnecessary burden and an unnecessary equation here. Certainly the gentleman from New Hampshire would not want to write into this law a

proposition that at the end of the 50 years would make a man, although he owned the property, cease to use it until he came to Congress and got a new permit to use it, when he might be perfectly willing to give it up if the Government wanted him to do so, provided he got his money.

Mr. STEVENS of New Hampshire. He would be a tenant in sufferance, and the gentleman just said that Congress would make wise laws in the future. I think that no doubt Congress will provide for the extension or renewal of these franchises. I think they will be more apt to do it, not only if the public interests demand action, but also the private interests of the gentlemen who have their money in there.

Mr. UNDERWOOD. I will say to the gentleman this, that there may be some cases where there is sufficient influence brought to produce immediate action by Congress. But the lone owner of one dam, who has got one Congressman to look after his interests, will often knock at the door of the Congress for a remedy. I do not know of anyone who is in a more hopeless attitude in this House than a man that has a private claim bill. I admit that there are many such bills that ought not to pass. But when there is a just claim a man has very great difficulty in getting the attention of the House.

The CHAIRMAN. The time of the gentleman from New Hampshire has expired.

Mr. UNDERWOOD. Mr. Chairman, I am opposed to the amendment of the gentleman from New Hampshire.

Now, Mr. Chairman, I disagree with some of my brethren on this bill about the penalties that they are putting on the bill, but I am really anxious to get as good a bill as we can to allow the utilization of the water that is being wasted by going down these streams. I think that is true conservation.

But I do not think that we can afford to put provisions in this bill that are either so restrictive that no man can use them, or so indefinite that no man can risk his property in them.

Now, it seems to me that this clause clearly fixes a fair and reasonable determination of this grant, "that the rights herein granted shall continue for a period of 50 years"—from when? From and after the date of the completion of the structure described in the original approval; "and after the expiration of 50 years such right shall continue until compensation has been made by said grantees for the fair value of the property herein."

Now, I take it that the Secretary of War under this bill has the right to fix the date of the completion of the dam. I think that is fairer than to say the date shall begin with the original grant. There are some dams that could be built in this country and completed in one year. Those are the smaller dams. Possibly they could be completed in two years. But the great structures, the great developers of horsepower that would be more beneficial to the country, to the people, and to business are the structures that take years to complete. I happen to know of one that is a possibility which will probably cost $20,000,000, and I have no doubt it will take at least 10 years to complete its construction.

Now, to say that the 50-year term on such a vast project should begin at the time the project is put into practical operation—a project which perhaps would take 10 years to complete—would practically limit the term to 40 years; and to say to the man on a small project, "You shall run from the time of the signing of the contract," where it takes only one year to build the dam, would be equivalent to saying that he would have 49 years in which to get something back, and that, it seems to me, is clearly putting the cart before the horse. The big project is the one on which you ought to regulate the time so as to get your money back.

I do not believe in the argument that there is not enough money in this country, that money can not be obtained to recapture these projects. If the owner of a dam earns small profits and there be not much money in the enterprise, I take it that at the end of 50 years he will go on, because neither the Government nor anybody else would want to take it away from him, since by doing so you would accomplish nothing if he were making only a small profit or no profit at all. But if there be one of these great enterprises that has greatly increased in value and there is a good profit in the enterprise, and that is shown, I do not think there will be any doubt in the world but that somebody will come to Congress, if Congress itself does not want to deal with the people, and say: "I can make better terms with you; I can make better terms with the Government than the man who has got it." There is no question about that. That is human nature. The desire to get a good thing will bring the bidders here, or the desire to get a good thing will make Congress put up the money itself in order to let the people have the benefit of it.

But I think it would be most injurious, if we want to build these dams, to say to capital: "Although we give you 50 years and agree to pay back to you the value of your property when we recapture it at the end of 50 years, you shall cease to use this dam until you come back and get the permission of Congress." That is practicable, because we are the owners of the property. Do you suppose you could rent a house to a man for a year, or rent the ground for a year to build the house on, or for 10 years, with a contract that if you took it away from him at the end of 10 years you would pay him a fair value for the structure, and then provide in the contract that he had to cease using the house until he came back and made a new contract with you? Nobody would accept it. He would not risk his money. Why should you put him out?

In the case of a dam, if you did not want it, why not let him go along and use it in the interest of the people? He is operating this dam. What condition would my friends put the users of that power in? Suppose that dam was being used to light a town, and at the end of 50 years, by the terms of this contract, you say, "Although you own the project you shall not use it," and he has to shut down his dam and say to the people of that town, "You can not have any more electricity to light up your houses and schools and churches until the consent of Congress is given to use it again."

Mr. FESS. Mr. Chairman, will the gentleman yield?

Mr. UNDERWOOD. Certainly.

Mr. FESS. Is there anything in the contention that if you do not begin the period at the time of the approval of the contract rather than at the completion of the project the work would be expedited?

Mr. UNDERWOOD. There is something in that; but, on the other hand, there is something on the other side. If all those dams could be built in the same length of time, and it would take a short time or a long time—for instance, if we all knew that we were getting back 10 years of our use from the beginning of the project, making it 60 years—that would be one thing; but the indefiniteness in the time of building makes the other a fair proposition.

Mr. FERRIS and Mr. LEWIS of Maryland rose.

The CHAIRMAN. The gentleman from Maryland has been seeking recognition, and the Chair will recognize him before recognizing the gentleman from Oklahoma.

Mr. LEWIS of Maryland. Mr. Chairman, I desire to discuss the amendment as well as the original clause.

Mr. COOPER. Will the gentleman permit one question right there?

Mr. LEWIS of Maryland. Surely.

Mr. COOPER. While the gentleman is discussing it, will he please discuss the provision, on page 14, which requires the dams to be completed within the further time of three years, making four years altogether?

Mr. LEWIS of Maryland. I shall have to decline to go into that point.

I quite agree with the statement of the distinguished gentleman from Alabama [Mr. UNDERWOOD], that it is child's play to pass this bill and seem to grant privileges under it unless its terms are sufficiently liberal effectively to attract private capital. If we are to proceed according to the rules of private finance, we must respect those rules as much as if we were dealing with the principles of chemistry itself. I quite agree with the gentleman, therefore, on the general proposition which he states. But, now, with reference to the facts of a 50-year franchise, do the rules of private finance actually require that this Nation, so far as its now living component parts are concerned, shall surrender irretrievably during a term of half a century control over the subject matter?

I have not heard the discussions on this point. Perhaps if I had heard them I should not be in doubt; but I can not help thinking in that connection that franchises granted by municipalities are not frequently of as great a length of time as 50 years, and yet, despite a limitation of 20 or 25 years, the subject matter is sufficiently attractive to get plenty of capital. Why, sirs, under the laws of Maryland corporations that might seek the privileges accorded in this bill for a franchise of 50 years would have their own corporate lives blown out 10 years before the franchise itself expired, because in Maryland there is a limitation of corporate charters to 40 years. Perhaps Representatives from other States will have other experiences of that kind to apply to the argument.

I would like to ask the gentleman from Alabama, in view of the very extensive attention he has given to this subject, whether he feels assured that the legislation will be useless unless a period as long as 50 years is granted for the enjoyment of the franchise?

Mr. UNDERWOOD. I will say to the gentleman from Maryland that the present law fixes the date at 50 years; and, more than that, this bill puts into the law of the land what is not in the law of the land to-day, and that is the right of regulating the price. Now, that is what the people of the United States are interested in. You may say that the price is not going to be properly regulated. If you say that, why, we might as well abandon legislation and say that we can not legislate in the interests of the people. But if you admit what I believe will be the case—that a reasonable price will be fixed under this law—then the corporation can not amortize its investment, because that regulation will prevent its doing so, in view of the fact that it is going to be paid the fair value of the property at the end of its term, and it should not be allowed to do so.

Then, what are the people interested in—your constituents and mine? They are primarily interested in but two things, in my judgment. One is that at the end of a fixed period the Government may again put its hand on the proposition and reconstruct it. The other is that during the life of that franchise they may receive the power generated by the plant at a fair and reasonable rate, and that is all they are interested in, because if they get their service at a fair price it is a matter of little concern to them who owns the dam and who controls it. Now, that being so, both of these propositions are in this bill without a contest. If the American people can get capital to develop the water power to furnish them light and heat, to create factories and foundries and employ labor, if they are assured that at the end of the fixed period they may recapture the franchise and readjust the conditions, and if during that period there is a fair and reasonable regulation of the price by public authority, I contend that it is not necessary to go further, and that when you put in your contract, as my friend from New Hampshire [Mr. STEVENS] would have you do, the proposition that at the end of 50 years possibly Congress will not for years afterwards live up to its contract and give you back the fair value of the property—not of the franchise or good will, but merely of your property that you put in there—and that you must sit around and can not use your property while you are waiting for Congress to take it away from you—it seems to me that that is absolutely unreasonable.

Mr. LEWIS of Maryland. Will the gentleman yield for a question?

Mr. UNDERWOOD. Certainly.

Mr. LEWIS of Maryland. Is it the gentleman's opinion that this law would not be reasonably effective in attracting private capital to develop the water power if the limit were 30 years instead of 50 years?

Mr. UNDERWOOD. I do not think it would. I am free to say that there are cases where it will probably take a small consideration to create a very great horsepower. You might invite men in to invest for 30 years or for 20 years, but this bill is being built for all cases. There are a great many cases that may be developed where it is of doubtful expediency, where electric power has no market, where one must create use for the power before he can get any money out of it. It takes time to do that. We are not writing the bill for a particular case. If you had a fall creating a great horsepower situated close to the city of Baltimore, I can see how you might grant a franchise in that instance and have it a valuable proposition lasting only 20 years. But suppose you have it in an interior county in Alabama, where there is no great city built to consume the power; where, after you create an immense horsepower, you must invite capital and invite people to come there and consume it. You must have time to build up your market. Therefore I say let us be reasonable about this proposition; let us give the opportunity on the average to invite capital to put its money into these projects clearly in the interest of the American people, if the promise of this bill is carried out, and reasonable regulation is furnished that will insure the users of that power a fair and reasonable value.

Mr. HUMPHREYS of Mississippi. Will the gentleman yield?

Mr. UNDERWOOD. Yes.

Mr. HUMPHREYS of Mississippi. There is a limitation put in section 12 of the bill that the dam must be completed within three years.

Mr. UNDERWOOD. I overlooked that proposition. It was not in the original bill, but was put in by amendment. I am not objecting to that, although I think that very provision limiting the building of a dam to three years will wipe out some of the largest structures of this country.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

Mr. HUMPHREYS of Mississippi. Mr. Chairman, I ask that the gentleman's time be extended two minutes.

Mr. DONOVAN. Mr. Chairman, the gentleman from Maryland had the floor.

The CHAIRMAN. The gentleman from Connecticut is right, if he makes that point. The gentleman from Mississippi asks unanimous consent that the time of the gentleman from Alabama may be extended two minutes. Is there objection?

There was no objection.

Mr. HUMPHREYS of Mississippi. There are a number of great water-power possibilities in this country that the gentleman is familiar with; Muscle Shoals, for instance. That dam could not possibly be built within three years.

Mr. UNDERWOOD. I agree with the gentleman. I think this bill would exclude a dam at Muscle Shoals, because it could not be constructed within three years.

Mr. HUMPHREYS of Mississippi. All authority, however, to build a dam has to be given by a special act of Congress, and in such case we would be compelled to provide in the special bill additional time for such project.

Mr. UNDERWOOD. I think so.

Mr. STEVENS of Minnesota. What was the time recommended by the engineers in the report to the Committee on Rivers and Harbors as to the construction of a dam at Muscle Shoals, and the term of the grant?

Mr. HUMPHREYS of Mississippi. I do not recollect.

Mr. STEVENS of Minnesota. I think it was 5 to 10 years for construction, and 100 years for the grant, or it could not be financed. That report was made after a very careful and thorough examination by a very able board of engineers, and President Roosevelt advised a term of 99 years for the Rainy River Dam.

Mr. UNDERWOOD. I recognize that some of the biggest dams, like that at Muscle Shoals under the report of the engineers of the War Department, could not be built within three years. I am anxious that the bill should go to the Senate. I realize that we will have to face many things, and that the bill will be largely written in conference, where such things are taken care of. That is the reason I have not offered amendments.

Mr. FERRIS. Mr. Chairman, when the length of the term of 50 years was first suggested to me as an appropriate term, I thought it was too long. At the beginning of the hearing before the Public Lands Committee I thought it was too long, and I had intended to offer an amendment to make it shorter, because the truth is that hydroelectric power is only 24 years old. It was born at Ames, Colo., in 1890, when the first project in the whole world was started. As I say, I thought 50 years was too long, but upon consultation, and having before us authorities which we thought were the best, like ex-Secretary Fisher, the present Secretary Lane, and ex-Forester Gifford Pinchot, who were all of the opinion that the maximum should be 50 years, I have become convinced that 50 years as a maximum is the proper term. It is the maximum. I am not in favor of more. I want 50 years to be the outside, to be the maximum—I want it to be the end. I am fearful as I read section 9 that it is much more. I know that the House wants to get through with this bill and I am sorry to detain the committee, but to my mind this is of so much more importance than the question of the charge for rental that I feel it incumbent on me to say a word. The section starts out with a 50-year term, but it does not stop there. Listen to the reading of the provision on page 10, line 12:

> And after the expiration of said 50 years such rights shall continue until compensation has been made to said grantees for the value of its property as hereinafter provided.

Mr. Chairman, it is fair to say that in time the Federal Government when it has exercised the right to retake or to take the property at all if a public purpose or interest may be shown may take it by condemnation, and this may be done irrespective of any recapture section that we may write into the law. So in the last analysis as that language reads, or at least as I understand it, it is not 50 years, but I fear it is forever, until the Federal Government comes in and appropriates money to take it away. I do not think the committee ought to ask that that be done. Water power as applied to hydroelectric power is only 24 years old. We are in this bill granting a term of 50 years. With that additional language we are granting a much longer term. Why? Because at the end of 50 years what does Congress have to do? It has to appropriate a sufficient sum of money to buy that plant and pay the fair value for it, and that means nothing more nor less than condemnation proceedings. Does anyone think that the American Congress at the end of 50 years would appropriate sufficient money to buy water-power plants and all of the accessory works that go with them? My thought is that when the 50-year term expires Congress will do what it often does—just stand by and let

them go on and on, and probably not even fix the conditions that are due the American people at the expiration of the term.

Mr. UNDERWOOD. Mr. Chairman, will the gentleman yield?

Mr. FERRIS. Yes.

Mr. UNDERWOOD. The gentleman has himself introduced a bill in this House that provides for a 50-year grant and that at the end of that time if the power is taken away the reasonable value shall be paid for it. What is the difference between the "reasonable" and "fair" value of it?

Mr. FERRIS. I will deal with that. In the first place, section 5 of our bill does not say for 50 years. It says for a period not greater than 50 years, and it leaves it to the Secretary to say whether or not it shall be even the full term of 50 years; but at the end of 50 years it provides three things that Congress can do. First, Congress may take it over, if it wants to, which it probably will never do; second, Congress can fix new conditions, and allow the same company to re-lease it under a new lease or grant, and that is something that Congress ought to do; and third, Congress can lease it to a third and new party altogether, which is a thing that it probably might want to do. Those are the three specific things provided for in sections 5 and 6 of our bill.

Mr. HUMPHREYS of Mississippi. Mr. Chairman, will the gentleman yield?

Mr. FERRIS. Let me first reply to the gentleman from Alabama. Mr. Chairman, the gentleman from Alabama [Mr. UNDERWOOD] suggests to this House and seems to think that at the expiration of 50 years a standstill would come, whereby havoc and disaster would come to the water-power company. No one favors that. I think no such thing would or could happen. If I thought that he was right in that contention, I would stand with him immediately and continue to stand with him. But he is not right about that. What will happen at the end of 50 years or before the end of 50 years? The water-power companies will come to Congress, or to the Secretary of War, or to the body that has control of the matter at that time and secure an additional franchise or extension of the franchise. The reason and the advisability of having that provided for is so that Congress or anyone may then apply the safeguards; may then apply the regulations that in the light of the experience of 50 years we will know should be applied.

Is there anyone here who knows what the growth and development of water power will be in 50 years? It is only 24 years old to-day. Its uses multiply with the close of each day. We light our cities with it and our homes. We heat our homes with it and we cook our food with it; run our street cars; run our railroads, our sewing machines, our electric fans; run our vehicles and do every conceivable thing with it when it is yet an infant only 24 years old. Who knows what we will use it for at the expiration of 74 years, the age it will be plus the 50-year term provided for herein. For that reason I greatly hope that this House may pause for a moment and look at section 9, and I greatly hope that the chairman of the committee and the leader of the House [Mr. UNDERWOOD] may both pause for a moment and see to it that instead of granting a 50-year term we do not grant a much longer term.

Mr. HUMPHREYS of Mississippi. The gentleman recalls that this bill requires that the rates and prices are subject to regulation and change every 10 years.

Mr. FERRIS. Oh, no.

Mr. HUMPHREYS of Mississippi. Oh, yes; according to the amendment that has been adopted.

Mr. FERRIS. That is true only as to the charge. The Sherley amendment provides that we may regulate it at the end of 20 years, and every 10 years thereafter. That refers to the charge and none of the other regulations. That may bring about the very thing that the gentleman from Alabama fears it will—namely, scare away capital, but I believe that 50 years is enough. I do not believe there ought to be any entangling threads or alliances that will let the water-power concern continue to hold it after the 50 years have passed. It is so easy to contend that Congress intended that their rights be perpetual we can scarcely be too careful about what we do. Fifty years is a good, long franchise. It is a franchise that will run beyond the lives of most, if not all, of us here to-day. I repeat we can not be too careful.

Mr. HUMPHREYS of Mississippi. The gentleman provides in his bill that at the expiration of 50 years there are three things which may be done. One is a lease may be granted to another party and other parties than the one originally granted.

Mr. FERRIS. That is one of the things; yes, sir.

Mr. HUMPHREYS of Mississippi. Now, what becomes of the property of the original grantee?

Mr. FERRIS. We provide for that and it is a rule that ought to be laid down——

Mr. HUMPHREYS of Mississippi. What is it?

Mr. FERRIS. We provide that we pay the actual cost for all the property that is nonperishable in character—land, water rights, and anything that will not perish by age and use—and we provide for the fair value for that which is perishable in character, such as machinery, buildings, and so forth. Now, let me proceed further. Both of those provisions are in the interest of the public as distinguished from being in the interest of the power companies.

Mr. HUMPHREYS of Mississippi. Will the gentleman yield for a question there?

Mr. FERRIS. Let me finish this. Both are in the interest of the public. First, because if we get the land back and the nonperishable stuff back at actual cost the public gets the benefit of the growth and increase of the value under the 50-year provision instead of the water-power company; and on the other hand, when we take the perishable property back, such as the buildings, houses, and machinery, which may decay or rust away, we get that at the depreciated value which is the fair value in the interest of the public, because that property is more apt to depreciate than to go up and we give the fair value when we take it over. Does that answer the gentleman? Is not that in the public interest? Is not that what we ought to do?

Mr. HUMPHREYS of Mississippi. Yes.

Mr. UNDERWOOD. I have just referred to the gentleman's bill and I find no language in section 5 that sustains the statement the gentleman made a moment ago.

Mr. FERRIS. Will the gentleman let me take the copy for just a moment?

Mr. UNDERWOOD. Certainly.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FERRIS. Mr. Chairman, may I have two or three minutes more?

The CHAIRMAN. Is there objection to the gentleman from Oklahoma proceeding for five minutes? [After a pause.] The Chair hears none.

Mr. UNDERWOOD. I ask the gentleman to read section 5 to the House.

Mr. FERRIS. I will be glad to do so, and this section——

Mr. UNDERWOOD. That is the section about recapture.

Mr. FERRIS. I will be glad to read it to the House. Section 5 of the bill reported by our committee, and I desire Members of the House not to think there is anything antagonistic between the committee, because there is not. These bills are not in conflict over subject matter. One of them deals with the navigable waters of the United States and the other bill has reference to the nonnavigable waters on public lands. There is no navigation in my State, and there is not a bit of water power in my State, so I have no interest in that.

Mr. UNDERWOOD. I do not think there is any conflict between the two bills. Neither charges anything whatever for the good will or franchise. Now, the bill of the gentleman provides that the land on which the house is built, the land acquired, which is small, shall be repurchased at the actual cost, and that for the balance of the property a reasonable price shall be paid. This bill simply provides there shall be nothing paid for franchise or good will and the fair value of the property. Now, that is the only distinction. But if the gentleman will read section 5 of his bill he will see that he makes a condition precedent to the Government taking up the franchise that it shall be paid for.

Mr. FERRIS. I will read the section so that we can understand it.

Mr. COOPER. Mr. Chairman, will the gentleman yield?

Mr. FERRIS. I will.

Mr. COOPER. The gentleman from Alabama has just said there is no conflict between the bill reported by the Public Lands Committee and the bill reported by the Committee on Interstate and Foreign Commerce. The reason is because the subject matter is different.

Mr. FERRIS. That is what I intended to say.

Mr. COOPER. It is very important it should be put in there, because a reader of the debates would not so understand it.

Mr. FERRIS. I thought I had already stated that these two bills dealt with a different subject matter, and hence, so far as the subject matter is concerned, I think there is no conflict.

Mr. ADAMSON. The gentleman has stated that before.

Mr. FERRIS. The gentleman from Alabama suggested I read section 5, and I will read it:

SEC. 5. That upon not less than three years' notice prior to the expiration of any lease under this act the United States shall have the right to take over the properties which are dependent, in whole or in part, for their usefulness on the continuance of the lease herein pro-

vided for, and which may have been acquired by any lessee acting under the provisions of this act, upon condition that it shall pay, before taking possession, first, the actual costs of rights of way, water rights, lands, and interests therein purchased and used by the lessee in the generation and distribution of electrical energy under the lease, and, second, the reasonable value of all other property taken over—

I think that is what I said—

including structures and fixtures acquired, erected, or placed upon the lands and included in the generation or distribution plant, and which are dependent as hereinabove set forth, such reasonable value to be determined by mutual agreement between the Secretary of the Interior and the lessee, and, in case they can not agree, by proceedings instituted in the United States circuit court for that purpose: *Provided*, That such reasonable value shall not include or be affected by the value of the franchise or good will or profits to be earned on pending contracts or any other intangible element.

And I make no point of that.

Mr. UNDERWOOD. The gentleman has read as far as I wanted him to go, because the question as to whether it should be reasonable value or fair value is a question that comes in section 10 of this bill, and is not involved. But the question, I said, was in the first bill, and there is a condition precedent that the property should be paid for in section 5.

Mr. FERRIS. Let me proceed just a moment further. Section 6 was the thing that the gentleman thinks the bill does not do. Section 6 does the precise thing I said it did.

Mr. UNDERWOOD. Let me call your attention to your own bill just a moment. It was the proposition I was calling the gentleman's attention to:

SEC. 5. That upon not less than three years' notice prior to the expiration of any lease under this act the United States shall have the right to take over the properties which are dependent, in whole or in part, for their usefulness on the continuance of the lease herein provided for, and which may have been acquired by any lessee acting under the provisions of this act, upon condition that it shall pay, before taking possession—

And so forth.

That is what I said. The gentleman writes in a bill here a condition precedent that the Government must pay a reasonable price for the property. He proposes to support the gentleman from New Hampshire, and he says that you can destroy the property by its nonusage and you can make the man who took it wait until he gets consent to use it. Now, your very bill provides as a precedent, no matter what you do afterwards—and I admit you do provide for other conditions—a condition precedent that the Government must pay for the property. And that is right. You were right to put it in there.

Mr. FERRIS. Now, Mr. Chairman, I did lay down two propositions in my first speech. I will now refer directly to the gentleman. I first say that we provide actual cost for nonperishable property and a fair value for all perishable property. I also assert this to be the proper rule in the interest of the public.

Mr. MADDEN. Will the gentleman yield right there? I wanted to know what the gentleman means by actual cost?

Mr. FERRIS. Actual cost to the power people at the time of purchase.

Mr. MADDEN. You do not say so.

Mr. FERRIS. There is no question about it, as you will find if you read the bill. Section 5 does not say precisely what I said it did, but it was my error in stating it was section 5. I should have stated it was sections 5 and 6. Sections 5 and 6 do the exact things that I stated the bill did. Let me read that:

SEC. 6. That in the event the United States does not exercise its right to take over, maintain, and operate the properties as provided in section 5 hereof, or does not renew the lease to the original lessee upon such terms and conditions and for such periods as may be authorized under the then existing applicable laws, the Secretary of the Interior is authorized, upon the expiration of any lease under this act, to lease the properties of the original lessee to a new lessee upon such terms, under such conditions, and for such periods as applicable laws may then authorize, and upon the further condition that the new lessee shall pay for the properties as provided in section 5 of this act.

Mr. UNDERWOOD. The gentleman is getting away from the proposition.

Mr. FERRIS. No; I am not. I am right on the question.

Mr. UNDERWOOD. If you want the Government to lease it to somebody else, that is a different question. But the question involved here is whether you can start the machinery before the Government pays for it, and in your own bill you provide as a condition precedent that it shall be paid for before the machinery stops.

Mr. FERRIS. The leader of the House is so much more able as a debater that I hope he will let me go on. I assert that section 5 does precisely what I said it did in the first instance, provides for the nonperishable property at actual cost and the other at fair value, and I again assert that both are in the interests of the public. And I now assert, as I should have done before, but I did not have the bill before me, that that section authorizes the Government—to do what? Three separate and distinct things. I assert that under its terms the Government can take it itself if it desires to do so. I assert that in all probability it will not do that, although many municipalities may want to do so. Second, we authorize the Government to re-lease it on new conditions to the first grantee. Third, it authorizes the Government to take it away entirely and let it go to a new man or a new company if that first company fails to do its full duty. In this instance the Federal Government and the public interests have three definite alternatives, whereas under the section as written you can do but one thing, and that is that the Federal Government appropriate enough money to pay for the property and take it over, a thing that they will probably never do.

Mr. LEWIS of Maryland. I want to ask you if under the terms of this act a municipality would have the power to condemn the property privileges? Would they have the right to do so under the license conferred by this act?

Mr. FERRIS. I do not think so. The chairman of the committee having this bill in charge would be much better authority than I on that subject.

The CHAIRMAN. The time of the gentleman from Oklahoma has expired. All time has expired on this amendment.

Mr. DONOVAN. Mr. Chairman——

The CHAIRMAN. The gentleman from Georgia [Mr. ADAMSON] has the floor.

Mr. ADAMSON. Mr. Chairman, I am ready to vote if the committee is ready. I do not want to cut off the gentleman from Connecticut [Mr. DONOVAN].

Mr. DONOVAN. Mr. Chairman, I move to strike out the last word.

Mr. STEVENS of Minnesota. I think there are some things that should be stated before a vote is taken.

Mr. ADAMSON. I wanted to ask the gentleman from Oklahoma a question or two if I could get a minute, and then I want the gentleman from Connecticut [Mr. DONOVAN] recognized and the gentleman from Minnesota [Mr. STEVENS] recognized.

Mr. FERRIS. If I can answer the question, I will.

Mr. ADAMSON. I think you recognize, from your remarks, that the Secretary of War may do just what your bill provides, elect some other person to take the property.

Mr. FERRIS. If that be true, and I do not think it is, it should be modified. Section 9 provides that the Government can do but one thing. I thought if that language does appear elsewhere undoubtedly this section should be amended.

Mr. ADAMSON. In reality there are not two substantial differences in the provisions of the two bills.

Mr. STEVENS of New Hampshire. Mr. Chairman, will the gentleman yield?

Mr. ADAMSON. Yes; I yield to my friend from New Hampshire. But I want to ask the gentleman from Oklahoma [Mr. FERRIS] or the gentleman from New Hampshire—either one of them—a question first.

Mr. FERRIS. I will yield to the abler of the two.

Mr. ADAMSON. I have heard you gentlemen, as I heard the gentleman from Kentucky [Mr. SHERLEY], talk about the inertia of Congress. I understand that you propose that the rights of the parties shall absolutely lapse at the end of 50 years. The enterprise is to go out of business, and it will have nothing at the end of that term. Now, suppose Congress takes the property over. That is confiscation.

Mr. FERRIS. The owner of the dam can do precisely what the street-car franchisees do. We do not grant an indefinite franchise to a street-car company. We grant a franchise for a certain period of time. Nobody assumes that they have to tear up their tracks when the term is out. They simply must come back and submit to the new conditions that are imposed.

Mr. ADAMSON. We have it provided in the bill that Congress shall have the right at the end of 50 years to make new terms and conditions. If you can not trust Congress, I do not know whom you can trust.

Mr. UNDERWOOD. They would say that at the end of 50 years you must stop the wheels.

Mr. ADAMSON. Yes; you say that at the end of 50 years the lights must go out, and the cars that are run by electricity must stop, and the plant must cease operations, because if the man's property is confiscated he will not keep it in repair, and for 10 years before the expiration of the period he will not keep it in repair; and until the gentleman from Oklahoma and the gentleman from New Hampshire can answer me clearly and reasonably and assure me that some provision will be provided or made to prevent this contingency, I can not see any merit in their reasoning.

Mr. FERRIS. Mr. Chairman, will the gentleman yield right there?

Mr. ADAMSON. Certainly.

Mr. FERRIS. Every word that the gentleman says is in support of a perpetual grant, to the end that there may be no difficulty in the exercise of this permit. The gentleman ought to know that there is no more difficulty in making new negotiations at the end of 50 years than there would be at the end of 100 years.

Mr. ADAMSON. The gentleman from Oklahoma knows that I do not favor a perpetual grant. I have announced many times that I do not favor a perpetual grant. This provision is written in harmony with his own bill, with one provision in addition to that in his bill, covering the use of dams on the public domain. What I want to see is that it is made definite and certain enough, so that a man's property will not be cut off at the end of 50 years, so as to induce him to build the dam. If Congress should fail to renew the consent and provide additional conditions, of course the fellow has got to pull up and leave, and leave his property there. Now, instead of answering that, the gentleman from Oklahoma states that I am in favor of a perpetual grant.

Mr. FERRIS. I did not say that.

Mr. ADAMSON. You say that my argument sustains that position. My argument is in favor of allowing the other side to know what his rights will be at the end of 50 years, so that we can persuade him to build the dam.

Mr. STEVENS of Minnesota. Will the gentleman allow me one sentence, to make an argument?

Mr. ADAMSON. The gentleman from Minnesota can get all the time he wants.

Mr. STEVENS of Minnesota. If such conditions as the gentleman states will ever happen, if this amendment be adopted, new legislation will be enacted for the proper extension of the franchise, and this will enforce it.

The CHAIRMAN. The time of the gentleman from Georgia has expired.

Mr. STEVENS of Minnesota. Mr. Chairman, there are two matters which the committee should have clearly in mind before it votes on the amendment offered by the gentleman from New Hampshire [Mr. STEVENS]. The first is that a proposition of this kind of any importance can not get under way to do a profitable business for a term of years. The gentleman from Alabama [Mr. UNDERWOOD] showed that every water-power project requires some time in which to fairly start its business. It needs to be organized and worked up, which requires time and money. Some of them require 10 years before they can get fairly on their feet. Any man with any sense in constructing a dam costing two or three million dollars will try to have it finished as soon as he possibly can, because the expense of interest and fixed overhead charges is running, and he can get no returns until the dam shall be finished. So that it is safe to assume that the dam will be finished by the owner as soon as possible.

Now, at the end of 50 years what will happen under this bill? Just what the gentleman from Oklahoma [Mr. FERRIS] stated would happen under the terms of his bill. If you will examine page 10, you will find that Congress has the option of doing three things: First, of taking the property for public use at a fair value; second, to allow it to be taken by any person authorized by Congress, turning it over to anybody else who can handle it better, also for a fair value; and, third, by making terms, as Congress may deem wise, as provided by lines 18, 19, and 20, exactly as the gentleman from Oklahoma contends is the case under his bill. In the franchises in Massachusetts and New Hampshire there is an indeterminate term, subject to practically the same conditions provided here. That is exactly what we try to do—to grant a fair, definite, fixed term, and then an indeterminate term, subject to recall or change on a year's notice.

Mr. STEVENS of New Hampshire. Mr. Chairman, will the gentleman yield?

Mr. STEVENS of Minnesota. I can not yield now. That is exactly what we wish to do. We have, first, a fixed term, and then Congress can do as it pleases, as stated by the gentleman from Oklahoma [Mr. FERRIS] in his bill, so that the Government and the people served by it can enjoy all the benefits accruing from the operation of this franchise. Otherwise the property used under franchise will run down and deteriorate and the people can not get the service, and the water resources of the region will not be developed and adequately used. Remember, the people have a right to good service, sure service, as well as low prices, and they can not get them with a plant running down toward the end of its term.

Now, what do you plan shall happen at the end of 50 years? Right now in this House there are several measures pending to extend the time for finishing dams already commenced. Nobody can tell when Congress will act upon matters of that kind. They may never be acted upon, and the owners who began in good faith may be ruined by our delay and nonaction. I instanced the other day in the general debate the fact that we from Minneapolis and St. Paul have been trying for three years to induce Congress to act upon the disposal of the power of one of its Government dams between our cities.

Nobody can tell or prophesy what Congress will do in a matter of this kind, or when it will act, though I have urged it in and out of season. The power will be wasted, fair understanding will be violated, and plans in larger public improvements will be frustrated. Remember these are matters actually before you right now in which these losses are being suffered. Why can you assume a better condition at any time hereafter? A prudent man will not. None of you dare to fairly assume any improvement, for the very good reason that we are unfitted by our pressure of business to deal with the details of such matters. These must be left to our administration officials if we desire efficient public service. That condition is always possibly to be expected. It will grow worse instead of better with the increased pressure of our business. No one can foresee; and it seems to me if we compel Congress to act affirmatively at any fixed time in the future, these projects are almost sure to fail on that account.

We ought to provide that the projects shall continue under proper regulations, that proper service and prices shall continue, and then give Congress the right, or give some official of the Government the right, to interfere at any time on proper notice, under proper conditions, to protect the interests of the public. Remember, too, that if you fix a limited term without a definite arrangement for the value of the property, at its termination the property must be amortized or paid for during such term. That will compel high rates and possibly inadequate service to the people. The rates must be inordinately high to pay for the property. Then it would be a gamble as to how much could be saved for the owners. That is not the proper way to handle the matter. Make long, sure terms, with low rates, regulated by public authority, partial amortization, with good service. That is the best practice. Now I yield to my friend from Maryland.

Mr. LEWIS of Maryland. I want to ask the gentleman if he does not think it desirable that the cities of the country, on proper occasion, should have the legal power to condemn these plants for their own use?

Mr. STEVENS of Minnesota. We have no constitutional authority to do that under this bill or any other bill. We could not do it though we considered something similar. We can discuss that when we come to section 14, but we could not do it in any other way.

Mr. LEWIS of Maryland. I want to suggest that we ought to take care of that feature of it.

Mr. STEVENS of Minnesota. I doubt whether we have the constitutional power to do it. The States can attend to that themselves, subject to our sovereign and paramount rights of navigation.

Mr. LEWIS of Maryland. If this Congress can make a grant to a private grantee, then in making that grant can it not write into it as a part of it the condition that the State's sovereign privilege of condemnation shall be extended to everything covered by the Federal license?

Mr. STEVENS of Minnesota. We can not extend the authority of the State, nor can we take it away, and we do not need to, for the State has authority to protect her own interests and citizens and do what the gentleman desires, subject to the rights of commerce.

Mr. ADAMSON. If the gentleman will yield, I will state that I submitted that question to the Attorney General, and he held in a letter to me that the States already had the authority to provide for condemnation, and that it is not a Federal function at all connected with this bill.

Mr. STEVENS of Minnesota. The States have the right to make terms as to what shall be done as to the use of the water in navigable streams, subject always to the natural rights as to commerce, and they can make that provision if they please. Congress has no right to fix conditions for the use of the States' power of eminent domain in a matter of this kind.

Mr. LEWIS of Maryland. Why can we not put it in as a condition, when we put property under a Federal license?

Mr. STEVENS of Minnesota. We could not make use of the States' power as a part of our contract, and it is unnecessary, as the way I have suggested is easier and surer, and enables the States and their various subdivisions to get exactly what they want if they go at it properly.

Mr. DONOVAN. Mr. Chairman, I offer the pro forma amendment. I think the committee ought to know the value of a plant of this character. If people in Alabama pay 12 cents per

kilowatt hour for the product of a plant of this character, it is a very valuable franchise. A few days ago, during the debate here, I asked a member of the committee about the prices paid for electricity by consumers. There has been no answer. He stated that he would publish it in his speech and put it in the RECORD.

Mr. STEVENS of Minnesota. I shall do so as soon as I can get the time.

Mr. DONOVAN. How are we going to vote intelligently without this information? Most of us are jurymen in this matter. We know little or nothing about it. From what little information I can get, I believe that 12 or 16 cents per kilowatt hour is an extraordinary price. The gentlemen who appeared before the committee mentioned 50 years as the proposed life of the franchise, and from the evidence it would seem that this committee is more generous than the promoters themselves suggested. The two gentlemen who appeared before the committee giving information are speculators in that line. So far as I can find out, they get two or three times as much out of the public for their product as other like concerns get out of the people

Now, if this bill and this report are based on that evidence, it is surely for the purpose of assisting a corps of promoters and financiers who are not going to have any actual money in this enterprise. We have in South Norwalk, Conn., a plant of this character that has no water to create power. The coal and oil which create the power have to be brought several hundred miles. That plant was started by a municipal government, and to-day it is paid for. It sells its power to its customers for 3 cents per kilowatt hour, and they sell to the little storekeeper and the little householder—the men who live in the small houses—for 5 and 6 cents per kilowatt hour.

Now, this great committee, and it is an intelligent committee, seems to have forgotten or has not thought that the customers in this country are the ones to be considered. They should have said, "Are we giving something to our people so that they are going to get power for light, power for the factory, at a lower rate than they are getting anywhere else?" That does not seem to have been in their minds. If you take pains to look at the report, you will see that 30 or 40 companies refuse to do certain things on certain work, but you will not find a single line as to the cost of electricity or as to its being delivered as power at any particular rate.

The truth is that while we are a government of the people and for the people, you have to go across the line to Canadian territory, under a monarchy, to find a place where the people are safeguarded and all these things sold to its people at a lower rate than we sell in this country. It would seem, Mr. Chairman, as if our great statesmen have nothing in mind except caring for the great and protecting the strong.

Fifty years is the testimony before the committee, but I admit that later on they asked for more at the prompting and suggestion of the chairman. When the gentleman from Tennessee asked the gentlemen about creating a trust or combination they had so much money in the business that some one started to develop it——

The CHAIRMAN. The time of the gentleman from Connecticut has expired.

Mr. DONOVAN. Mr. Chairman, I ask unanimous consent for two minutes more.

The CHAIRMAN. The gentleman from Connecticut asks that his time be extended two minutes. Is there objection?

There was no objection.

Mr. DONOVAN. Now, to show you an instance where the people and their interests are looked after, here is what they do for them in the State of Connecticut. This is a Connecticut proposition. You can not always tell just what electricity will cost by comparison with other places. Here is what we furnish: We furnish tungsten lamps at a price much below cost. We give them incandescent lamps free. We give them arc lamps without charge, and we replace meters at the will of the patrons without charge. Nor do we charge for running service wires to premises unless it is difficult, and, besides all that, we furnish power electricity at 3 cents per kilowatt, and at 5 or 6 cents per kilowatt we furnish the little housekeeper and the little storekeeper. Now, in this committee the price to consumers has been forgotten. The whole aim has been to strengthen, to intrench, and to lengthen for promoters of these projects, because they will not be caught with the stock themselves, but will unload it on the unsuspecting public.

Mr. COOPER. Did I understand the gentleman from Georgia to say that the Attorney General has held, as a matter of law, that the State could authorize the condemnation of a dam constructed under a Federal statute in a navigable stream?

Mr. ADAMSON. No; I did not say that. I said I consulted him about the question of putting in the bill a provision for condemnation of land, and he held that the State ought to provide for the condemnation of land for these water-power projects.

Mr. COOPER. What land?

Mr. ADAMSON. The land necessary to forward the project. Somebody has to own the land.

Mr. COOPER. When it comes to condemnation of this improvement, the dam is the one thing. Condemnation of that would not go to any State.

Mr. ADAMSON. I did not mention the condemnation of dams after construction.

Mr. COOPER. That is the point in this case. The people do not want the property without the dam.

Mr. ADAMSON. You do not need to condemn a dam after it is constructed; all you have to do is to confiscate it.

Mr. COOPER. I do not think anybody in this House wants to confiscate private property.

Mr. ADAMSON. Will the gentleman reciprocate and let me ask him a question?

Mr. COOPER. And I have not seen any indication of that kind.

Mr. ADAMSON. The gentleman asked me a question. Let me play Yankee and ask him a question. If we do not provide some way for him to be settled with at the end of his term, and his right lapses and he has to wait for a new act of Congress and take any such concessions as Congress will give him, might it not result in confiscation if Congress did not act?

Mr. COOPER. There are so many "ifs" in that question that do not rise in the situation before the House that I do not want to take time to answer it. Nobody in the House of Representatives or in the United States of America, I believe, proposes to confiscate private property.

Mr. ADAMSON. Begging the gentleman's pardon, there is no "if" in it. The proposition is that at the end of 50 years his rights terminate.

Mr. ANDERSON. Mr. Chairman, I would like to be heard briefly on this amendment. The vital question in this amendment is one of placing the burden of initiating the action to extend or terminate the term. It is a question of whether at the end of 50 years it is going to be the move of the grantee or the move of the Government. It is a question of whether at the end of 50 years the grantee is going to come to Congress and ask for a new lease of life or whether at the end of 50 years the Congress is going to take some action to terminate the grant. The recapture clause will not accomplish the result expected from this amendment.

I think that the value of the recapture clause in this bill is very much overestimated. The Government does not want these water-power plants. It does not want to operate these water-power plants. It wants the right of recapture simply as a protection to the Government in case the grantee does not fairly operate the plant. It wants it merely as a reservation in the interest of the public. Nobody expects that the Government is ever going to have to use the recapture power. We are simply putting it in this bill as an additional precaution, and that is all. It is a means of bringing the grantee to terms acceptable to the Government in the public interest, but it is a means that the Government would have great difficulty in making effective because of the continuance of the grant until it is exercised. Gentlemen claim that men will not invest their money in these enterprises if there is an absolute cut-off in the grant at the end of 50 years. The answer to that proposition is that men are investing their money every day under just exactly such conditions. I have in my hand a copy of a contract made by the Forest Service with the Pacific Light & Power Co. of California. Article 2 of that contract provides:

Unless sooner revoked by the Secretary, this permit shall terminate and become void at the expiration of 50 years from October 7, 1910.

That is an absolute cut-off.

Mr. ADAMSON. Mr. Chairman, will the gentleman yield?

Mr. ANDERSON. Yes.

Mr. ADAMSON. That is on the public domain, and that contract is not hampered by the paramount obligation to navigation, is it?

Mr. ANDERSON. Not at all.

Mr. ADAMSON. It is an absolute power right without having its benefit reduced by obligation to navigation.

Mr. ANDERSON. But the gentlemen who are arguing for an indefinite term are doing so upon the theory that men will not invest their money under the proposed amendment. Exactly the same argument was made with respect to the Sherley amendment, and exactly the same situation exists there with respect to leases made by the Forest Service in the Agricultural Department, and while we are on that proposition I will read the provision in the contract with respect to that proposition:

To pay annually in advance from the 1st day of January, 1913, to the First National Bank of San Francisco, Cal. (United States depository),

or such other Government depository as may be hereafter legally designated, to be placed to the credit of the United States, a rental charge for the occupancy and use of the lands of the United States described and shown upon the maps hereinbefore referred to, which rental charge shall be calculated from the "rental capacity of the power site" as defined in article 1 hereof, at the following rates per horsepower per year——.

It being understood that said estimated rental capacity may be adjusted annually by the Secretary to provide for changes in ownership of lands in reservoir sites and on water-conduit lines, and for changes in length of primary transmission; and it being further understood that at any time not less than 10 years after the issuance of the permit, or after the last revision of rates of rental charge thereunder, the Secretary may review such rental rates and impose such new rental rates as he may decide to be reasonable and proper.

In other words, the Secretary may change the rates every 10 years under this permit. The gentleman from Oklahoma the other day put into the RECORD a number of water-power projects which were being built and operated under just such a provision as this.

Mr. STEVENS of Minnesota. Will the gentleman yield for a question?

Mr. ANDERSON. Certainly.

Mr. STEVENS of Minnesota. Does not the gentleman realize this difference between projects such as he describes that may cost $50,000, $100,000, or $200,000, where the grantee can get 100 per cent of the potential power out of it, and a project on a navigable stream that may cost $2,000,000 or $3,000,000 or $5,000,000 out of which the man can probably get only 50 per cent of the potential power?

Mr. ANDERSON. Well, I think some of the projects authorized by the Forest Service are just as big as projects authorized on navigable streams. I do not recognize any fundamental difference with respect to the termination of a grant or terms under which a grant may be made; in other words, in the conditions which the Government may exact in permitting the use of something in which it has some kind at least of a property right and which can not be used without its consent.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Hampshire.

The question was taken, and the Chairman announced the noes appeared to have it.

Mr. STEVENS of New Hampshire. Division, Mr. Chairman.

The committee divided; and there were—ayes 26, noes 26.

Mr. ANDERSON, Mr. RAINEY, and Mr. STEVENS of New Hampshire. Mr. Chairman, I demand tellers.

Tellers were ordered.

The committee divided; and the tellers [Mr. ADAMSON and Mr. STEVENS of New Hampshire], reported that there were—ayes 25, noes 35.

So the amendment was rejected.

Mr. RAINEY. Mr. Chairman, I make the point of order there is no quorum present. This is one of the most important features of this bill, and it is 6 o'clock. Mr. Chairman, I believe I will withdraw the demand.

Mr. DONOVAN. Mr. Chairman, I make the point of order there is no quorum present.

Mr. ADAMSON. I was going to move to rise when we finish this section.

Mr. DONOVAN. No; I make the point.

The CHAIRMAN. Does the gentleman from Connecticut insist upon his point of no quorum?

Mr. ADAMSON. If the gentleman will let us finish this section I will move to rise.

Mr. GARRETT of Texas. Mr. Chairman, a motion to rise leaves this question pending?

Mr. ADAMSON. No; it is ended, but I wanted to pass the section.

Mr. GARRETT of Texas. But the point of no quorum applies to this section.

Mr. ADAMSON. No; the gentleman from Illinois withdrew it.

Mr. GARRETT of Texas. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. GARRETT of Texas. The gentleman from Illinois made a point of no quorum, which if sustained, would give a yea-or-nay vote on this amendment.

The CHAIRMAN. No; there is no such thing as a yea-or-nay vote in the committee.

Mr. DONOVAN. Mr. Chairman, I suggest that these gentlemen make a motion to adjourn if they want to get out of this trouble.

Mr. ADAMSON. The gentleman will not let me make the motion.

The CHAIRMAN. The gentleman from Connecticut renews his point of no quorum.

Mr. GARRETT of Texas. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. GARRETT of Texas. My parliamentary inquiry is this, that if the point of no quorum is good, we vote on this tomorrow in the Committee of the Whole House on the state of the Union again, because this does not settle this question.

Mr. ADAMSON. But the point was withdrawn

Mr. GARRETT of Texas. But I make the point of order he can not withdraw the point of no quorum without unanimous consent after he has made it.

Mr. ADAMSON. But he did do it.

The CHAIRMAN. The point is simply this, if the Chair understands what the gentleman from Texas is trying to get at, and that is whether or not the amendment has been defeated——

Mr. GARRETT of Texas. That is the point.

The CHAIRMAN (continuing). If the point of no quorum is made.

Mr. GARRETT of Texas. Yes.

The CHAIRMAN. The amendment would have to be voted on again after you got a quorum.

Mr. GARRETT of Texas. That is what I want.

The CHAIRMAN. Now, if the point of order of no quorum is withdrawn, then the amendment is adopted. The question is whether the gentleman wants to make a point of no quorum.

Mr. DONOVAN. Mr. Chairman, the point is made. I call for the regular order.

The CHAIRMAN. The gentleman from Connecticut [Mr. DONOVAN] makes a point of no quorum. The Chair will count. [After counting.] Sixty-seven Members are present, not a quorum.

Mr. ADAMSON. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. GARNER, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 16053, an amendment to the general dam act, and had come to no resolution thereon.

ENROLLED BILLS SIGNED.

Mr. ASHBROOK, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bill of the following title, when the Speaker signed the same:

H. R. 12579. An act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1915.

The SPEAKER announced his signature to enrolled bill of the following title:

S. 1784. An act restoring to the public domain certain lands heretofore reserved for reservoir purposes at the headwaters of the Mississippi River and tributaries.

ENROLLED BILL PRESENTED TO THE PRESIDENT FOR HIS APPROVAL.

Mr. ASHBROOK, from the Committee on Enrolled Bills, reported that this day they had presented to the President of the United States, for his approval, the following bill:

H. R. 12579. An act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1915.

EXTENSION OF REMARKS.

Mr. FOWLER. Mr. Speaker, during the consideration of the Post Office appropriation bill I made a speech on the floor of the House, but have been so busy that I never have extended it in the RECORD. I ask unanimous consent now to do that.

The SPEAKER. The gentleman from Illinois asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. TALCOTT of New York. Mr. Speaker, I ask unanimous consent to proceed for five minutes.

The SPEAKER. The gentleman from New York asks unanimous consent to proceed for five minutes. Is there objection?

Mr. MANN. Mr. Speaker, I shall object to that, but I will not object to the gentleman printing the letter in the RECORD.

Mr. TALCOTT of New York. That is the purpose for which I wished to proceed. Mr. Speaker, and that will be all I care to do. I ask unanimous consent, then, to extend my remarks in the RECORD by printing a letter from the Secretary of Commerce addressed to me.

The SPEAKER. The gentleman from New York asks unanimous consent to extend his remarks in the RECORD by printing a letter from the Secretary of Commerce. Is there objection?

There was no objection.

ADJOURNMENT.

Mr. ADAMSON. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 57 minutes p. m.) the House adjourned until Friday, July 31, 1914, at 12 o'clock noon.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the several calendars therein named, as follows:

Mr. HAY, from the Committee on Military Affairs, to which was referred the bill (H. R. 17765) to regulate details of majors in the Ordnance Department, reported the same without amendment, accompanied by a report (No. 1049), which said bill and report were referred to the House Calendar.

Mr. FERRIS, from the Committee on the Public Lands, to which was referred the bill (H. R. 16738) to provide for the payment of certain moneys to school districts in Oklahoma, reported the same without amendment, accompanied by a report (No. 1050), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. TAYLOR of Colorado, from the Committee on the Public Lands, to which was referred the bill (S. 2651) providing for the purchase and disposal of certain lands containing the minerals kaolin, kaolinite, fuller's earth, china clay, and ball clay, within portions of Indian reservations heretofore opened to settlement and entry, reported the same without amendment, accompanied by a report (No. 1051), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, committees were discharged from the consideration of the following bills, which were referred as follows:

A bill (H. R. 16720) granting an increase of pension to William McCabe; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 17947) granting a pension to Louis N. Hickey; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 18121) to correct the military record of Stephen L. Noland; Committee on Invalid Pensions discharged, and referred to the Committee on Military Affairs.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. WICKERSHAM: A bill (H. R. 18143) providing for a survey and report upon Dry Straits, Alaska, and an estimate of the cost of dredging said channel, and for other purposes; to the Committee on Rivers and Harbors.

Also, a bill (H. R. 18144) for the control and conservation of the fisheries of Alaska, and for other purposes; to the Committee on the Merchant Marine and Fisheries.

By Mr. KEY of Ohio: Resolution (H. Res. 582) authorizing the Clerk of the House to pay, out of the contingent fund of the House, to Jennie Mercer, widow of Philip Mercer, certain sums of money; to the Committee on Accounts.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ASHBROOK: A bill (H. R. 18145) granting an increase of pension to Jacob Burrier; to the Committee on Invalid Pensions.

By Mr. BAKER: A bill (H. R. 18146) granting an increase of pension to Ida C. Wilcox; to the Committee on Invalid Pensions.

By Mr. CLANCY: A bill (H. R. 18147) to pay a certain sum of money to certain railway post-office employees; to the Committee on Claims.

By Mr. FERRIS: A bill (H. R. 18148) granting an increase of pension to William Hardenbrook; to the Committee on Invalid Pensions.

Also, a bill (H. R. 18149) granting an increase of pension to William Zuker; to the Committee on Invalid Pensions.

By Mr. FOWLER: A bill (H. R. 18150) granting an increase of pension to David C. Monroe; to the Committee on Invalid Pensions.

Also, a bill (H. R. 18151) granting an increase of pension to Hugh M. Parkinson; to the Committee on Invalid Pensions.

By Mr. FRENCH: A bill (H. R. 18152) granting an increase of pension to William S. Crowe; to the Committee on Invalid Pensions.

Also, a bill (H. R. 18153) granting an increase of pension to Washington Kellogg; to the Committee on Invalid Pensions.

By Mr. GALLIVAN: A bill (H. R. 18154) granting a pension to Agnes Hedman; to the Committee on Pensions.

By Mr. GREGG: A bill (H. R. 18155) for the relief of Jennie McC. Harrison; to the Committee on War Claims.

Also, a bill (H. R. 18156) for the relief of certain citizens of Brenham, Washington County, Tex.; to the Committee on War Claims.

By Mr. HAY: A bill (H. R. 18157) for the relief of the trustees of Lebanon Evangelical Lutheran Church, of Shenandoah County, Va.; to the Committee on War Claims.

By Mr. HOLLAND (by request): A bill (H. R. 18158) for the relief of the trustees of Urbanna Episcopal Church, Middlesex County, Va.; to the Committee on War Claims.

Also (by request), a bill (H. R. 18159) for the relief of the trustees of Carmel Baptist Church, Caroline County, Va.; to the Committee on War Claims.

By Mr. REED: A bill (H. R. 18160) for the relief of Israel Henno; to the Committee on Military Affairs.

By Mr. REILLY of Connecticut: A bill (H. R. 18161) granting an increase of pension to Mary J. Finnegan; to the Committee on Invalid Pensions.

By Mr. SLEMP: A bill (H. R. 18162) granting a pension to James Morrison; to the Committee on Pensions.

By Mr. STONE: A bill (H. R. 18163) granting an increase of pension to John C. Clark; to the Committee on Pensions.

By Mr. WALKER: A bill (H. R. 18164) for the relief of the heirs of Solomon Cohen; to the Committee on Claims.

By Mr. WILSON of Florida: A bill (H. R. 18165) for the relief of Mattie E. Johnson, administratrix; to the Committee on Claims.

By Mr. YOUNG of North Dakota: A bill (H. R. 18166) to correct the military record of A. J. Henry; to the Committee on Military Affairs.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. ANTHONY: Petition of J. Dorcas and other citizens of Holton, and Minnie Howard and Otto Wiley and others, of Everest, Kans., favoring national prohibition; to the Committee on Rules.

By Mr. COOPER: Petitions of Joseph F. Klus and others, of Kenosha, Wis., protesting against national prohibition; to the Committee on Rules.

By Mr. FESS: Petitions of citizens of Lebanon, Mason, Waynesville, Spring Valley, Cedarville, and Jamestown, all in the State of Ohio, favoring the passage of House bill 5308, relative to taxing mail-order houses; to the Committee on Ways and Means.

By Mr. GILL: Petition of San Francisco Metal Trades Council, relative to apprentice system in Navy Department; to the Committee on Naval Affairs.

By Mr. GILMORE: Petition of citizens of the State of Massachusetts, favoring national recognition of Dr. F. A. Cook's polar efforts; to the Committee on Naval Affairs.

By Mr. HART: Petition of the Woman's Christian Temperance Union of the State of New Jersey, 10,700 members, favoring Federal censorship of motion pictures; to the Committee on Education.

By Mr. HAYES: Petitions of 1,080 citizens of San Jose, Cal., protesting against national prohibition; to the Committee on Rules.

Also, petitions of 540 citizens of the State of California, favoring national prohibition; to the Committee on Rules.

By Mr. MAGUIRE of Nebraska: Petition of citizens of College View, Nebr., favoring national prohibition; to the Committee on Rules.

By Mr. MERRITT: Petitions of Rev. E. J. Goodell, L. G. Carpenter, Arthur Goodell, Miss Eliza Carpenter, Henry Carpenter, Henry Cashman, Goldwin Arnold, Miss Cornelia McPherson, Lafayette L. McKinney, Earl Hobbs, C. J. Matthews, Mrs. Maria Welch, Miss Mary R. Lillie, Mrs. May Vosburg, Eliza Goodell, Mrs. A. Goodell, F. D. Matthews, Mrs. Edna Arnold, Mrs. Grace Curry, Mr. F. L. Curry, Mrs. A. G. Dodge, William Matthews, Mrs. H. Cashman, Mrs. E. Cubit, Edward Cubit, W. H. Coolidge, E. E. Hobbs, Mrs. E. E. Hobbs, W. W. McKinney, C. C. Carpenter, Mrs. Florence Vorce, Mrs. W. H. Hobbs, Mrs. W. H. Coolidge, Clara J. Carpenter, Geo. M. Carpenter, E. I. Dominy, and Cora

B. Dominy, all of Ellenburg Center, N. Y., favoring national prohibtion; to the Committee on Rules.

By Mr. MILLER: Petitions from the employees of the Oliver Iron Mining Co., Virginia district, Minn., and Canisteo district, Minn., opposing the dissolution of the United States Steel Corporation; to the Committee on the Judiciary.

By Mr. O'HAIR: Petitions of sundry citizens of the State of Illinois, favoring national prohibition; to the Committee on Rules.

By Mr. PLATT: Petition of Baptist Church of Poughkeepsie, N. Y., favoring national prohibition, to the Committee on Rules.

By Mr. RAKER: Papers to accompany House bill 17865, a bill for increase of pension for Martha Ann Benjamin; to the Committee on Invalid Pensions.

By Mr. REILLY of Connecticut: Petition of International Union of Journeymen Horseshoers against national prohibition; to the Committee on Rules.

By Mr. WHITE: Petitions of W. P. Rice and 3 others, of Lowell; J. W. Barloe and 10 others, of Malta and McConnelsville; Lee L. Cassady and 12 others, of Dresden; Ora Blizzard and 4 others, of Frazeysburg; A. P. Ong and 2 others, of Stockport; J. L. Scott and 8 others, of Beverly and Waterford; S. H. Windelkin and 15 others, of Marietta; C. W. Adams and 7 others, of McConnelsville, all of the State of Ohio, favoring legislation to tax mail-order houses; to the Committee on Ways and Means.

SENATE.

FRIDAY, *July 31, 1914.*

(Legislative day of Monday, July 27, 1914.)

The Senate reassembled at 11 o'clock a. m. on the expiration of the recess.

Mr. SMOOT. Mr. President, I believe we ought to have a quorum present this morning. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Utah suggests the absence of a quorum. Let the Secretary call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Culberson	Newlands	Smoot
Brady	Cummins	Norris	Stone
Brandegee	Gallinger	Overman	Thomas
Bristow	Hitchcock	Page	Thornton
Bryan	James	Perkins	Tillman
Burton	Jones	Pomerene	Vardaman
Catron	Kenyon	Reed	Walsh
Chamberlain	Kern	Shafroth	West
Chilton	Lane	Sheppard	White
Clapp	Lea, Tenn.	Shields	
Clarke, Ark.	Martine, N. J.	Simmons	
Crawford	Myers	Smith, Ga.	

Mr. THORNTON. I was requested to announce the unavoidable absence of the junior Senator from New York [Mr. O'GORMAN]. I ask that this announcement may stand for the day.

Mr. KERN. I desire to announce the unavoidable absence of my colleague [Mr. SHIVELY]. This announcement may stand for the day.

Mr. JONES. I desire to announce that the junior Senator from Michigan [Mr. TOWNSEND] is absent from the city. He is paired with the junior Senator from Arkansas [Mr. ROBINSON]. I will let this announcement stand for the day.

Mr. WHITE. I desire to announce that my colleague [Mr. BANKHEAD] is absent, unavoidably. He is paired. This announcement may stand for the day.

Mr. PAGE. I wish to announce the necessary absence of my colleague [Mr. DILLINGHAM]. He is paired with the senior Senator from Maryland [Mr. SMITH].

Mr. CLAPP. I desire to announce the unavoidable absence, on account of sickness, of the senior Senator from Wisconsin [Mr. LA FOLLETTE]. I desire this statement to stand for the day.

Mr. GALLINGER. I wish to announce the unavoidable absence of the junior Senator from Maine [Mr. BURLEIGH]. He is paired with the junior Senator from New Hampshire [Mr. HOLLIS].

Mr. SMOOT. I desire to announce the unavoidable absence of the junior Senator from Wisconsin [Mr. STEPHENSON].

Mr. JAMES. I desire to announce the unavoidable absence of my colleague [Mr. CAMDEN]. I will let this announcement stand for the day.

The PRESIDENT pro tempore. Forty-five Senators have answered to their names. There is less than a quorum of the Senate present. The Secretary will call the roll of absentees.

The Secretary called the names of absent Senators, and Mr. SAULSBURY and Mr. SUTHERLAND answered to their names when called.

Mr. GRONNA, Mr. MCCUMBER, and Mr. RANSDELL entered the Chamber and answered to their names.

The PRESIDENT pro tempore. Fifty Senators have answered to their names. A quorum of the Senate is present.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by A. C. Johnson, one of its clerks, announced that the House insists upon its amendments to the bill (S. 1644) for the relief of May Stanley, and for other purposes, disagreed to by the Senate, and agrees to the conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. POU, Mr. STEPHENS of Mississippi, and Mr. SCOTT managers at the conference on the part of the House.

COMMITTEE SERVICE.

Mr. KERN. I desire to have unanimous consent to arrange some committee assignments for the Senator from Kentucky [Mr. CAMDEN] and the Senator from Alabama [Mr. WHITE].

The PRESIDENT pro tempore. The Senator from Indiana asks unanimous consent at this time to arrange assignments on certain committees.

Mr. BRANDEGEE. Will the Senator permit any morning business to be done other than what he is asking should be transacted?

Mr. KERN. It is not for the Senator from Indiana to permit; the Senator from Indiana is asking permission.

Mr. BRANDEGEE. The Senator asks us to give unanimous consent to his morning business, and I wondered whether he would withhold his consent if we asked leave to transact morning business.

Mr. KERN. If it were a matter of this kind, I certainly would yield to it.

Mr. BRANDEGEE. Of course, we can have no matter of that kind, I assume, at present.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Indiana? The Chair hears none.

Mr. KERN. I am authorized by the junior Senator from Nevada [Mr. PITTMAN] to request that he be relieved from further service upon the Committee on Pacific Railroads and also upon the Committee on Industrial Expositions.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Indiana? The Chair hears none, and the junior Senator from Nevada is relieved from further service upon the committees named.

Mr. KERN. I move the adoption of the following order.

The PRESIDENT pro tempore. The Senator from Indiana presents an order which the Secretary will read to the Senate.

The Secretary read as follows:

Ordered, That Senator FRANCIS S. WHITE, of Alabama, be, and is hereby, appointed to membership on the following committees of the Senate:

Committee on Indian Affairs, to fill the vacancy occasioned by the resignation of Senator STONE therefrom.

Committee on Claims, to fill the vacancy caused by the resignation of Senator OVERMAN therefrom.

Committee on Public Buildings and Grounds, to fill the vacancy caused by the resignation of Senator KERN.

Committee on Civil Service and Retrenchment, to fill the vacancy caused by the resignation of Senator MYERS.

Committee on Public Health and National Quarantine, to fill the vacancy caused by the resignation of Senator HUGHES.

That Senator JOHNSON N. CAMDEN, of Kentucky, be appointed to membership on the following named committees of the Senate:

Committee on Post Offices and Post Roads, to fill the vacancy caused by the resignation of Senator CHILTON therefrom.

Committee on Immigration, to fill the vacancy caused by the resignation of Senator HOLLIS.

Committee on the Census, to fill the vacancy caused by the resignation of Senator POMERENE.

Committee on Industrial Expositions, to fill the vacancy caused by the resignation of Senator PITTMAN.

Committee on the Philippines, to fill the vacancy caused by resignation of Senator WALSH.

Committee on Pacific Railroads, to fill the vacancy caused by the resignation of Senator PITTMAN.

Committee on the University of the United States, to fill the vacancy caused by the resignation of Senator OVERMAN.

The PRESIDENT pro tempore. The question is on agreeing to the order. Unless there is objection it is adopted. The Chair hears none.

Mr. WILLIAMS. I ask unanimous consent out of order to introduce a bill for proper reference.

Mr. SMOOT. I object.

The PRESIDENT pro tempore. The Senator from Utah objects.

Mr. MARTINE of New Jersey. I do not suppose there is any use for me to ask unanimous consent, but I wish to report a